

22

SERVICE PROVIDER AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

The Waterberg District Municipality

Duly represented by G.Tlaubatla in his representative capacity as the
the Waterberg District Municipality Acting Municipal Manager

('The Client')

And

XLP Documents Solutions (Pty)Ltd

Registration No: 2015/294906/07

('The Service Provider')

Duly represented by Martin Van Ghent in his representative capacity as
XLP Documents Solutions Managing Director

In respect of the **Provision of Operating Lease of Printing, Photocopying,
Faxing and Scanning Machines**

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Preamble

Whereas:

Waterberg District Municipality expressed its intention to appointment XLP Documents Solutions (Pty) Ltd for the Provision of Operating Lease of Faxing, Scanning, Photocopying Machine in terms of regulation 32 of the Municipality Supply Chain Management Regulation 32.

XLP Documents Solutions (Pty) Ltd therefore expressed its intention to accept the regulation 32 appointment with the terms and conditions expressed below.

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 or 1st January 2018**

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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, to be submitted within a reasonable time, prior to commencement of project;
- 1.2.10. **'Remuneration schedule'** means the details of remuneration.
- 1.2.11. **'Service Provider'** means XLP Documents Solutions (Pty)Ltd
- 1.2.12. **'Services'** refers to the operating Lease of printing, faxing, scanning and Photocopying Machines including the maintenance and repairs of same thereof.
- 1.2.13. **'Project Duration'** means a period of 36 Months commencing from the date of signature of this agreement being the 1st January 2018.

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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 and complete the performance of the service on the dates detailed in terms of clause 2.3 .
- 2.3. The Service Provider will commence upon date of signature of service agreement and complete in a period not exceeding 36 (thirty six) months from the date of signature for performance of service as agreed by both parties.

3. Team

- 3.1. The team members that will be involved in the project must be as according to the proposal and where a team member resigns or leave the institution the client must be informed.
- 3.2. In case where one of the team members mentioned in the proposal leaves an institution, the company must replace such a member with a member equivalent (in terms of the rank, qualification and the experience) or more.

4. Shareholders

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- 4.1 In case where the shareholdings of the company changes during the year the client must be informed of such changes

5. Extent of terms and conditions

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

- 5.1.1. Letter of appointment,

- 5.1.2. This Agreement, and,

- 5.1.3. The National Treasury General Conditions of Contract

- 5.1.4. Acceptance letter

- 5.1.5. Tender Document including the Service Provider's proposals documents.

- 5.1.6. The service provider quotation.

- 5.2. In the event of conflict between the provisions of any of the aforesated documentation and this Agreement, the provisions of this Agreement shall prevail.

- 5.3. 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.

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6. Scope of Services

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6.1. 1(one) x black & white Photocopier:

- 6.1.1.1. Copying process: Minimum of 80 A4per minutes copy or print speed
Duplex Unit
- 6.1.1.2. Automatic Duplex Documents Feeder
- 6.1.1.3. Zoom-Enlargement/ reduction 25%-400% in 1% increment
- 6.1.1.4. Multi Bypass tray
- 6.1.1.5. Cover Interposer
- 6.1.1.6. PCL Print Controller
- 6.1.1.7. Scan to PDF, Scan to HDD and Scan to email
- 6.1.1.8. 2 or 4 hole punch unit
- 6.1.1.9. Post Sheet inserter
- 6.1.1.10. Binder
- 6.1.1.11. Fax Mode
- 6.1.1.12. Stapler
- 6.1.1.13. 100 page saddle stich booklet Fisher
- 6.1.1.14. Automatic Collating
- 6.1.1.15. Automatic Trimmer Function
- 6.1.1.16. Folding Function- be able to fold papers
- 6.1.1.17. E-email

6.2 8(Eight) Black & White Photocopiers.

- 6.2.1. Copying process: minimum of 36Pages per minutes copy or print speed.
- 6.2.2. Duplex Unit
- 6.2.3. 50 Sheet Bypass tray
- 6.2.4. Post Sheet Inserter
- 6.2.5. Cover Interposer
- 6.2.6. Hole Punch Unit
- 6.2.7. Automatic Duplex Documents Feeder
- 6.2.8. Full Colour Scanning to email and PDF
- 6.2.9. Zoom enlargement/reduction 25%-400% in 1% increments
- 6.2.10. Fax Unit
- 6.2.11. E-mail Mode.

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6.3. 2(Two) Colour Photocopiers.

- 6.3.1. Copying process: Minimum of 36 pages per minutes copy or print speed.
- 6.3.2. Duplex Unit
- 6.3.3. 50 Sheet inserter
- 6.3.4. Cover interposer
- 6.3.5. 2 Hole Punch Unit
- 6.3.6. Automatic Duplex documents feeder
- 6.3.7. Full Colour Scanning to email and PDF
- 6.3.8. Zoom enlargement or reduction 25%-400% in 1% increments
- 6.3.9. Fax Unit.
- 6.3.10. E-mail Mode.

4. 1(One) Black & white Photocopiers

- 4.1. Copying Process: Minimum of 60 pages per minutes copy or print speed
- 4.2. Duplex Unit
- 4.3. 150 Sheet bypass
- 4.4. Post Sheet Inserter
- 4.5. Cover Interposer
- 4.6. 2 Hole Punch Unit
- 4.7. Automatic Duplex documents feeder
- 4.8. Full colour Scanning to email and PDF
- 4.9. Zoom enlargement or reduction 25%-400% 1 increments.
- 4.10. Fax Unit
- 4.11. E-mail mode.

7. Price.

7.1. XLP Documents Solutions (Pty) Ltd is appointed for the provision of operating lease of photocopying service for Waterberg District Municipality at amount of R2 716848.00 Incl Vat for period of 36 Months. The rental amount will escalate by 10% year on year.

7.2. The contract price in respect of the tender is as per the pricing schedules provided by XLP Documents Solutions (Pty) Ltd, proposal is tables below:

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Item	Description of Machine	Serial Number	Meter Reading A4/A3	Rental amount	Office No:	Contact Person	Contact Number
1.	4112 CPPRO	3528851 591	A4 2176832 A3 412227	R7000	Record Room	Maboa Violet	0147183000 /69
2.	WC5335	3322861 507	A4 129747 A3 58	R3000	Social Service Thabazimbi Office		
3	WC7835	3913806 467	Colour A4 240844 Colour A3 495 B/W A4 146605 B/W A3 14	R4750	Head Office Office NO:1 2 CFO	Ms Maboa V	
4	WC5335	3322828 461	A4 107404 A3 2571	R3000	Modi/Disaster	Chief Fire (Dan Mokonyama)	014 7183376/ 0826641159

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					cente r Contr ol Room		
5.	WC5335	3322828 593	A4 93142 A3 71	R3000	Head Office NO:5 8	Ms Maboa.V	
6	WC5335	3322828 410	A4 121795 A3 254	R3000	Head Office MM Office NO:4 4	Ms Maboa V	
7	WC5855	3660244 297	A4 304511 A3 7508	R4750	ID office. Office NO:1 8	Ms Maboa. V	
8	WC5335	3322815 688	A4 158482 A3 736	R3000	Mana ger CSSS Office NO:3 1	Ms Maboa.V	
9	WC5335	3322825 578	A4 220856 A3 316	R3000	Plann ing Office Office	Ms Maboa.V	

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					NO:3 6		
10	WC5335	3322791 851	A4 153707 A3 1713	R3000	Head Office Social Servi ce Office NO:5 0	Ms Maboa.V	
11	WC5335	3322829 794	A4 124068 A3 150	R3000	Social Servi ce Moko pane Office (cnr Ruiters &Kru ger str)	EHP Mr Simon Monene	0154919 724/073393 6688
12	WC5335	3322815 246	A4 122764 A3 3	R3000	Leph alale Disas ter Cente r.	Fire Fighter (Victor Mautjane)	014 7624200 0729468164
13	DC700	3527593 831	Colour A4 577425 Colour A3	R6500	Head Office Recor ds Room	Ms Maboa.V	

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			9053		Office		
			B/W A4		NO:		
			1242775		27		
			B/W A3				
			958				

7.3. The on- site Technician with the total costs of R10 000.00 vat inclusive

7.4. The total rental amount per Months amount to R68 400.00 vat Incl.

7.5. The Rental amount shall escalate by 10% year on year.

8. Deliverables:

8.1. The installation of 13(Thirteen) Photocopying machines which are in good working condition as per appointment letter and accepted proposal for XLP Documents Solutions (Pty) Ltd.

9. Maintenance Plan:

9.1. The service provider shall provide the service to the client as stipulated bellow:

9.2. Service agreement includes the following:

9.2.1. Provision and replacement of Toner

9.2.2. Replacement parts or spares

9.2.3. Labour

9.2.4. Travelling expenses

9.2.5. Routine Service.

9.3. The Service Agreement exclude the following:

9.3.1. Papers

9.3.2. Ring Binders.

9.3.3. Staples.

9.4 Time frame:

9.4.1. XLP Documents Solutions (Pty) Ltd service will run for a period of 36 months but renewable annually based on performance.

9.4.2. The Service Provider will respond to all the maintenance and service request within 4 hours after all has been reported on or before 10h00 on the next day if reported after 14h00.

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Failure to reported or respond to the query within the above stipulated and agreed time frame the penalties determined by the Municipal Manager shall be imposed on the Service Provider and should the service Provider failed and or neglected to remedy the breach with a period of 2 days after been notified the agreement shall be automatically terminated.

9.4.3. Normal working hours for the purpose of this agreement shall be from 7h30-16:30 Monday to Friday.

10. The Service Provider agree to maintain the equipment in an efficient operating condition.

10.1. The Service Provider shall not be liable for any loss, including any consequential loss, arising from the malfunction or failure of the equipment to function or from any other causes whatsoever. Any repairs or services required by the client due to the misuse or negligence or outside normal working hours ,may at service providers option, be charged to the client in accordance with the service Provider's current service charges and conditions.

11. Waterberg District Municipality , agrees to:

11.1. Pay the service Provider as per the agreed pricing schedule contained in this agreement.

11.2. Provide the Service Provider with one staff member from all the various Departments for each of the machines to be trained by the XLP Document Solution technicians on the operations of the photocopiers. The Client shall notify the service provider in writing of any change of these personnel.

11.3. Provide access at any time or times during working hours to any authorised representative of the service provider for any purpose of this agreement.

11.4. Accept liability for any damage of the equipment if damage is due to any negligence on the part of the client or its employees or persons who have access to the equipment.

11.5. Pay amount due to the Service Provider by the 1st of every Month, upon receipt of an invoice, failing which the Service Provider may temporarily suspend the supply of services and consumables until outstanding amounts due to the service provider are paid in full.

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- 11.6. Supply the Service Provider in a manner determined by the service provider, from time to time, with a meter reading from each piece of equipment once a month. The client appoint Ms V. Maboja, contact number (014) 718 3300/69.
- 11.7. The client shall be liable for the for the corruption of data or damage to the hard disc caused by the power fluctuation or lightning will be the client's responsibility.
- 11.8. Keep the service Provider's all delivered goods in their custody and under their control at the premises mentioned in the service level agreement and shall at not be removed without the service provider's knowledge or consent.
- 11.9. The client shall notify the service provider of any change of the address and the telephone number of equipment at least two weeks prior to movement.
- 11.10. Pay service Provider for the relocation of equipment at the current pricing.
- 11.11. Equipment can only be moved or relocated by the service provider at the client's written request.

11.2. Replacement of Photocopiers

11.2.1. If a photocopier machine is broken and the technicians find it difficult to fix or repair the machine within 14 working days after being reported, the machine must be replaced with another machine of the same features at no extra costs while the broken one is being repaired or checked. Failure to replace the machine will lead to non-payment for the period of non-replacement.

11.3. Assets and Ownership of the Equipment or Photocopiers

11.3.1. Since the contract is an operating Lease of Photocopying machines and not a finance lease agreement, it is agreed that the service provider is the owner of all the leased photocopying machines and that at the end of the 36 Months period of these agreement service provider shall remove or take back the photocopying machines.

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12. Obligation of the Service Provider

12.1. The afforested services shall be rendered diligently and to the standard required by Client

12.2 The service provider appoints Martin Van Ghent ID NO:7205 225 023 082 in his capacity as the Managing Director as well 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. The service Provider will amongst others, render the following services;

12.3.1. Supply and delivery of the **13(thirteen)** Photocopying machines to the Waterberg District Municipality.

12.3.2. The Supply of machines shall include the installation, operationalization and training of the client on the functions of the photocopying machines.

12.3.3. That the delivered Photocopying machines will be supplied as per the terms of reference with all the required features as per the tender.

12.3.4. The service Provider must at all material time be required to adhere to the maintenance plan and the response time after fault reporting as per their proposal and this documents.

12.3.5. Service Provider must submit the monthly reports to the client.

12.3.6. The service level agreement is for 36 Months period but renewable annually based on performance.

12.3.4. The service provider shall deliver and install the below listed operating Photocopying machines:

Description of Equipment	Quantity
1. 4112 COPPRO	-1(one)
2. WC7855	-1(one)
3. WC5335	-9(nine)
4. WC5855	-1(one)
5. DC700	-1(one)
6. Total Number of Machines	13(Thirteen)

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13.1.1 Obligations of the Client

13.1.1 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.

13.1.2. The Client appoint **Stanley Tebogo Manaka** in her capacity as the Divisional Manager Legal and Administration 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.

14. Remuneration

14.1. The client hereby agrees remunerate the service provider strictly in accordance With the provision of fee structure as stipulated on Appointment Letter dated the 15/12/2017 and the Service Provider's quotation.

14.2. If the client defaults or falls into arrears with any payment then service provider reserves its rights to claim payment of interest at the prime rate ,calculated from 30(thirty) days after the payment has become due to the actual date of payment .

15. Penalty Clause

Penalty will be imposed on the following cases:-

- 15.1. Late delivery/ installation or delay to respond to maintenance and or repair call without just reasons.
- 15.2. Poor Quality
- 15.3. Non- compliance to scope of work, reporting requirements and any other tender documents requirements.
Any other misrepresentation or poor performance

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16. Variations and cancellations

- 16.1. 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.
- 16.2. Any deviation that shall be done without prior approval by the client shall be null and void.

17. Limitation of liability

- 17.1. 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.
- 17.2. 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.

18. Disputes

- 18.1. 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:
 - 18.1.1. 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,
 - 18.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient manner.

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

18.2.1. 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,

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

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

19. Breach

19.1. 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.

19.2. 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.

20. Termination

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

20.2. 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.

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21. Severability

21.1. 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.

22. Whole agreement

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

23. Domicilium citandi et executandi

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

23.1.1. Client :

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

23.1.2. Service Provider :

Office of :XLP Documents Solutions (Pty)Ltd
6 Prince Hussain Street
Polokwane
0700

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.

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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:

24.1.1. 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;

24.1.2. 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;

24.1.3. 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.

25. All Parties shall:

25.1.1. hold the other parties Confidential Information in the strictest confidence;

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

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25.1.3. 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.

22.2.4 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.

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

22.2.5 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.

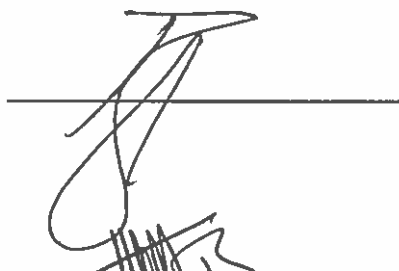
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26. Authority

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

Signed at **Modimolle** on this 1st January 2018.


AS WITNESSES:


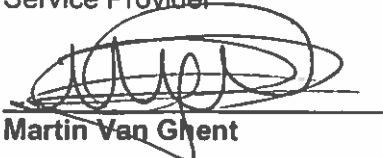
1.  _____ For and on behalf of the Client


2.  _____
T.S. Monda
 _____
Mr G. Tloubatla
Acting Municipal Manager

Signed at **Modimolle** this 1st January 2018

AS WITNESSES:

1.  _____ for and on behalf of the Service Provider

2.  _____
Bridger
 _____
Martin Van Ghent
Managing Director
XLP Documents Solutions (Pty)Ltd

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