

SERVICE PROVIDER AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

The Waterberg District Municipality
(‘The Client’)

And

Mohale Incorporated
Registration No: 2003/001322/21
(‘The Service Provider’)

In respect of the **Provision of the
Legal Services**

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Preamble

Whereas:

Waterberg District Municipality expressed its intention to appointment of the professional consultants for provision Legal Services.

Mohale Incorporated therefore accept its 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 ;**
 - 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 **Mohale Incorporated** under the registration name: Mohale Incorporated company established in 2003 under registration no 2003/001322/21
- 1.2.12. **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 5;
- 1.2.13. **'Tender'** means Tender No. **WDM/2018/19-02** as advertised by the Client and being in respect of the **Provision of Legal Services**.
- 1.2.14. **'Project Duration'** 36 months.

- 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 thirty six (36) 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

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

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

6. Scope of Work or Services is listed below:

6.1. (a). Conyencing and Notary :

- (i). Transfer and registration of immovable property
- (ii)Preparation and registration of servitude and other limited rights
- (iii)Obtain copies of title deeds and Notary Documents

(b).Debt Recovery:

- (i).Institute Civil Proceedings
- (ii). Execution of Judgement
- (iii).Conduct Section 65 Procedure

(c).Labour Litigation in Local Government:

- (i).Represent the Municipality at Labour Court

(d). General Legal Advisory Services in Local Government:

- (i). Drafting of legal opinions, by laws and policies
- (ii). Civil proceedings
- (iii). Contract Management
- (iv). General advice and assistances with regards to public administration and Local Government.

7. Price

The price in respect of the Tender shall be the amount contained in the Service Provider's fee structure as contained on page 6 and 7 of 19 of Mohale Incorporated tender document and is attached hereto as annexure "A"

8. Obligation of the Service Provider

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

8.2 The service provider appoints **Mr N.P Mohale** 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.

8.1.1 Obligations of the Client

8.1.1 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.

8.1.2 The Client appoints **G.M Seleka** in her capacity as the Manager Corporate Support and Shared Services of Waterberg District Municipality and liaison for all matters relating to the project by and between the Service Provider and the Client.

9. Remuneration

9.1 .The client hereby agrees to remunerate the service provider strictly in accordance With the provision of fee structure as stipulated and page 6 and 7of 19 of the tender document which is attached hereto as Annexure "A"

9.2. 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 .

10. Penalty Clause

Penalty will be imposed on the following cases:-

- Poor Quality.
- Non- compliance to scope of work, reporting requirements and any other tender documents requirements.
- Any other misrepresentation or poor performance

11. Variations and cancellations

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

12. Limitation of liability

- a. 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.
- b. 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.

13. Disputes

- a. 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:
 - i. 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,
 - ii. The parties shall seek ways and means to resolve the dispute in the most expedient manner.
- b. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly:
 - i. 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,
 - ii. The rules of AFSA shall govern the conduct of the arbitration.

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

14. Breach

- a. 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.
- b. Should the party in breach have failed to rectify the breach within the aforestated time period, the other party may cancel this Agreement and claim recovery of damages.

15. Termination

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

16. Severability

Any provision on this agreement found invalid or unenforceable, such term shall not be severable and invalidity of all other terms shall not be affected or be ground for termination of this agreement.

17. Whole agreement

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

18. 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 :**

Office of Mohale Incorporated
16 Thabo Mbeki Dr
Mokopane
0601

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.

19. Confidentiality

19.1 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:

19.1.1 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;

19.1.2 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;

19.1.3 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

19.1.4 Which is independently developed by or on behalf of the Receiving Party.

19.2 **All Parties shall:**

- 19.2.1 hold the other parties Confidential Information in the strictest confidence;
- 19.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 19.2.3 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.
- 19.2.4 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.
- 19.2.4 The Parties’ obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.
- 19.2.5 In the case of a release, announcement or document which is required 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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20. Authority

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

Signed at **Modimolle** on this 14 day MARCH of 2019.

AS WITNESSES:

1. *[Signature]* For and on behalf of the Client

2. *T.S. Mankes* ~~*[Signature]*~~ *[Signature]*
Mr M.M Maluleka
WDM Municipal Manager

Signed at **Modimolle** this 14 day MARCH of 2019.

AS WITNESSES:

1. _____ for and on behalf of the Service Provider

2. _____
[Signature]
Mr N.P. Mohale
Director Mohale Incorporated

15/03/2019.

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