SERVICE PROVIDER AGREEMENT

Waterberg District Municipality

on the Go for Growth

WATERBERG DISTRICT

MUNICIPALITY

Entered into by:

The Waterberg District Municipality

('the Client')

And

WAKE UP INVESTMENT T/A RURAL FIRE RESCUE (PTY) LTD

Registration Company Name: Rural Fire Fescue (Pty) Ltd

('The Service Provider')

In respect of the **Supply and Delivery of Modimolle Heavy Duty Foam Cannon.**

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Preamble

Whereas:

.....

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;

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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. **'Remuneration schedule'** means the details of remuneration.

1.2.11. **'Service Provider'**means **Rural Fire Rescue (Pty)Ltd,** under the registration name: Wake Up Investment T/A Rural Fire Rescue(Pty)Ltd a company established in 2010 under Registration number **2010/014578/07;**

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/2012/13-07,** as advertised by the Client and being in respect of the **supply and delivery of Modimolle Heavy Duty Foam Cannon.**

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,

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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** and complete in a period not exceeding **three (03) months** from the date of signature for the performance of the services 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.

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. All tender documents comprising the Tender (Schedule 1);

5.1.2. The Service Provider's proposal (Schedule 2);

5.1.3. Letter of appointment (Schedule 3); and,

5.1.4. This Agreement.

5.1.5. The National Treasury General Conditions of Contract

5.2. 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.

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 Services**

6.1 Index already provided in the original Bid Documents and as per the submitted proposal by **Rural Fire Rescue (Pty) Ltd**.

6.2 This specification provides for the **supply and delivery of Modimolle Heavy Duty Foam Cannon.** The completed **Modimolle Heavy Duty Foam Cannon** shall be delivered to the Waterberg District Municipality.

7. **Deliverables**

7.1 **supply and delivery of Modimolle Heavy Duty Foam Cannon** in accordance with the bid specifications within **three (03) months.**

8. **Price**

8.1 The contract price in respect of the Tender is as per the pricing schedules provided in by **Rural Fire Rescue (Pty) Ltd** proposal as follows:

8.2 Rural Fire Rescue (Pty) Ltd is appointed for the **supply and delivery of Modimolle Heavy Duty Foam Cannon** at **R176 262.40(VAT inclusive), if VAT registered and R154 616.14(VAT exclusive) if not VAT registered.**

9. **Obligations of the Service Provider and submission of monthly reports**

9.1. The aforestated services shall be rendered diligently and to the reasonable standard and expectations as required by the Client.

9.2. The service provider is required to submit written progress reports on or before the **07th of every month** to the Supply Chain Management Unit (SCMU) and the Project Manager until the project is fully completed.

9.3. The service provider appoints Mr. Horst Hilse in his personal capacity as Implementation and Support Manager of supply and delivery of Modimolle Heavy Duty Foam Cannon 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.

10. **Obligations of the Client**

10.1. 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.

10.2. The Client appoints Mr. L.D. Mokonyama in his capacity as the Chief Fire 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.

11. **Remuneration**

11.1. The Client hereby agrees to remunerate the Service Provider strictly in accordance with the provisions of Schedule 3 (letter of appointment).

11.2. Payment of the Contract value will be made on completion of specific deliverables as tabled in section 6, 7 and 8.

11.3. The Client shall effect 100% payment to the Service Provider upon the latter's performance of its delivery of **Modimolle Heavy Duty Foam Cannon.**

11.4. The Client shall upon the Service Provider submission of a valid tax invoice and approval by the Client that the deliverables contained therein have been achieved, pay the invoiced amount to the Service Provider within thirty (30) days of receipt of invoice.

11.5. If the Client defaults or falls into arrears with any payment then the Service Provider reserves its right 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. Unless the client is awaiting clarification of issues on

11.6. The invoice, in which case the payment may exceed (30 days).

12. **Retention**

12.1 The **10%** of the total project amount will be retained or reserved by the Waterberg District Municipality for quality assurance. This will be paid back to the Service Provider 3 months after the expiry date of the contact.

13. **Variations and cancellations**

13.1. 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.

14. **Limitation of 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 afore stated 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**

15.1. 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.

16. **Disputes**

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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.

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

16.2.1. 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,

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

16.3. 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 afore stated time period, the other party may cancel this Agreement and claim recovery of damages.

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17.3. Time frame for this project is **three (03) months** upon date of signature of service level agreement.

17.4. Any request for an extension on time frame 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 afore stated 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.

19. **Severability**

19.1. 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.

20. **Whole agreement**

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

21. ***Domicilium citandi et executandi***

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

21.1.1. **Client** :

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

21.1.2. **Service Provider** :

Wake Up Investment T/A Rural Fire Rescue(Pty) Ltd
Unit 2, 3 Herman Pieter's Road
Boksburg
1459

21.2. 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.

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.

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

The expiry date of the implementation period for this project is **three (03) 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. **Maintenance and Warranties**

24.1. The **warranty period** shall commence from the delivery date in service applicable to the trailer and shall be a minimum period of **twelve (12) months**.

24.2. The **fire fighting equipment warranty** will be covered through the applicable manufacturer's warranty period.

25. **Confidentiality**

25.1 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:

25.1.1 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;

25.1.2 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;

25.1.3 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

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

25.2 All Parties shall:

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

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

25.2.3 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 bythe confidentiality obligations contained herein.

25.3 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.

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

25.5 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.

26. **Warrant of Authority**

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

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Signed at **Modimolle** on this 14 day JANUARY of 2013.

AS WITNESSES:

1. _____ For and on behalf of the Client

2. _____

MV LETSOALO
WDM Municipal Manager

Signed at **Modimolle** this 29 day JANUARY of 2013.

AS WITNESSES:

1. _____ For and on behalf of the Service Provider

2. _____

Wake Up Investment T/A Rural Fire Rescue (Pty) Ltd