

AGREEMENT FOR THE SUPPLY & CONFIGURATION OF VOIP SERVICES

entered into between

WATERBERG DISTRICT MUNICIPALITY



on the Go for Growth

and

INTELLEHUB (PTY) LTD

(Registration No 2013/186821/07)

for the supply & configuration of VoIP services

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AGREEMENT STRUCTURE

PART A: Agreement for the supply and configuration of VoIP services

PART B: Schedules

- 1) Payment Mechanism
- 2) Output Specifications
- 3) Variation Procedure
- 4) VoIP Services Agreement

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WHEREAS:

- (A) This Agreement shall regulate the relationship between the Municipality and the Service Provider pertaining to the supply and configuration of VoIP services to enable the efficient and optimal delivery of municipal services by the Municipality to its citizens and ratepayers.
- (B) The Project objectives have been aligned to the strategic objectives of the Municipality and the Output Specifications took into consideration the vision of the Municipality as expressed in Mayoral Committee Resolutions.
- (C) Accordingly, the Municipality has advertised a tender, number WDM/2018/19-03 inviting proposals from the private sector to undertake the Supply and Configuration of VoIP services.
- (D) Pursuant to a competitive tender process, the Service Provider was selected based on its responsiveness to the requirements of the bid, consequently the Municipality would request the Service Provider, and the Service Provider is required to agree, to the provision of the Services on terms and conditions set out in this Agreement.

IT would therefore be AGREED as follows:

collected by the Service Provider, relating to the Municipality in respect of this Agreement; and

1.7.2 data specific to the Services which the Service Provider generates, processes, or supplies to the Municipality in the performance of the Services;

1.10.3 provided that should any dispute arise regarding the nature of any data, it shall at all times be incumbent upon the Service Provider to prove the confidential or proprietary nature thereof;

1.8 **"Consents"** means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority in connection with the performance of any of the Services;

1.9 **"Contract Manager"** means the designated Municipality's official so appointed to manage the contract between the Service Provider and the Municipality;

1.10 **"Contract Year"** means a successive 12 (twelve) month period measured from the Service Commencement Date of this Agreement and each anniversary thereafter;

1.11 **"Corrupt Act"** means:

1.11.1 offering, giving or agreeing to give to the Municipality or any other local, provincial or national government or authority ("**Public Body**"), or to any person employed by or on behalf of the Municipality any gift or consideration of any kind as an inducement or reward:

1.11.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Municipality or any other Public Body; or

1.11.1.2 for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Municipality or any other Public Body;

1.11.1.3 entering into this Agreement or any other contract with the Municipality or any other Public Body in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its

subject to any Services or Service Levels by the Service Provider, unless as agreed between the Parties;

1.16 **"Good Industry Practice"** means in relation to the manner in which the Services are rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

1.17 **"Independent Expert"** means an independent expert appointed by agreement between the parties and which shall exclude competitors to the Service Provider, to, as the case may be, undertake a function as recorded in this Agreement or resolve a dispute between them where required in terms of this Agreement, provided that:-

1.17.1.1 if the parties are unable to agree on an independent expert within 5 (five) days of either party requiring one to be appointed, either party may thereafter require that same shall be appointed by AFSA;

1.17.1.2 such expert shall be deemed to act as an expert and not as an arbitrator;

1.17.1.3 the decision of such Independent Expert shall (in the absence of clerical or manifest error) be final and binding on the parties;

1.17.1.4 the Independent Expert's fees for so acting shall be borne by the parties in equal shares unless the Independent Expert determines that the conduct of either party was such that it should bear a greater proportion or all of such fees; and

1.17.1.5 where AFSA is required in terms of this Agreement to appoint an independent third party, it is the parties intention that such third party shall have the requisite skills, experience and expertise necessary to determine the specific issue at hand, provided further that AFSA's appointee shall not be subject to dispute by either party on the grounds that it has failed to act in accordance with the intention expressed in this clause;

1.18 **"Intellectual Property Rights"** means patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, know-how, logos, trade or business names and other

- 1.29 **"Service Managers"** means collectively, the respective officials designated by the parties for the purposes of managing ongoing operational aspects of the Agreement;
- 1.30 **"Service Period"** means the period from the Service Commencement Date to the Termination Date and which, unless otherwise agreed between the Parties, shall not be less than or exceed the period of 36 (thirty six) months from the Service Commencement Date;
- 1.31 **"Service Procedures"** means the processes and procedures applicable to the provision and acquisition of Services by the parties pursuant to this Agreement as recorded in the Service Procedure Manual, as read with the provisions of the SLA, provided that should there be any conflict between the Service Procedures and the SLA, the provisions of the SLA shall prevail;
- 1.32 **"Signature Date"** means the date of signature of this Agreement by both parties but if signed on different dates, the last of such dates;
- 1.33 **"SLA"** means the service level agreement defining the Services, Service Levels, reciprocal obligations of the parties in respect thereof and penalties payable in respect of any failure to achieve such Service Levels, as set out schedule 2 (Output Specifications) hereto;
- 1.34 **"Staff"** means, in respect of a party, any officer, employee, agent, consultant or sub-contractor of such party;
- 1.35 **"Termination Date"** means either of the following:
- 1.35.1 the date on which this Agreement expires due to the effluxion of time;
 - 1.35.2 if the Service Provider is provisionally or finally wound up or placed in business rescue; or
 - 1.35.3 terminates for any other reason as contemplated in this Agreement;
- whichever is the earlier date;
- 1.36 **"User Departments"** means the Information, Communication and Technology department/division/section of the Municipality or such other departments as may be included in this Agreement by the parties in accordance with the Variation Procedure from time to time;
- 1.37 **"Variation Procedure"** means the procedure referred to in clause 7 of this Agreement and as recorded in schedule 3 (Variation Procedure) hereto;

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written notice to the Service Provider, which notice shall be given at least 90 (ninety) days prior to the expiry of the Termination Date, for a period of 6 (six) months, during which period the Municipality may terminate this Agreement on 30 (thirty) days' notice to the Service Provider.

4.2 The Parties agree that the Service Period forms an integral part of this Agreement and, accordingly, that in computing the duration of this Agreement, the Service Period shall be taken into account.

4.3 Unless otherwise agreed between the Parties, the Service Period shall not be less than or exceed the period of 36 (thirty-six) months from the Service Commencement Date.

5 QUASI-CONTRACTUAL RELATIONSHIP

5.1 **Intention of the parties.** For the purposes of simplifying the relationship between the Service Provider and the Municipality User Departments, the parties have agreed that the contractual relationship will exist between the Service Provider and the Municipality. In this regard it is the parties intention that:

5.1.1 the Municipality shall be responsible for procuring the fulfilment by the User Departments of all the obligations contemplated in this Agreement including, without limitation, the obligation to pay for the Services and recognise the exclusivity of the Service Provider as contemplated in clause 32;

5.1.2 all disputes, litigation and the like will be conducted and resolved between the Service Provider and the Municipality; and

5.1.3 a User Department shall not be entitled to institute action against the Service Provider in its own name for any cause of action which arises pursuant to this Agreement and the Service Provider shall institute any such action against the Municipality only and not a User Department;

5.2 **Principal parties not deprived of claims, etc.** Likewise, it is not the parties' intention that:

5.2.1 the Municipality, to the extent that it seeks to institute or defend any claim on behalf of a User Department; or

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without limitation the User Department's obligation to mitigate its losses;

5.4.3.2 the Municipality shall be liable to the Service Provider to the extent that the Service Provider would have had any successful contractual or delictual claim (or counterclaim) against the User Department in respect of such action;

5.4.4 the Service Provider suffers any loss, harm or damage due to any act or omission of a User Department pursuant to this the Service Provider shall, vis-à-vis the Municipality:

5.4.4.1 fulfil all its obligations in terms of the common law in respect of such damages, including without limitation the obligation to mitigate its losses.

6 THE SERVICES

6.1 **Unitary Payment.** During the life of this Agreement, the Service Provider agrees and the Municipality undertakes, to make payment to the Service Provider in accordance with the provisions of schedule 1 (*Payment Mechanism*) and on the terms contained in this Agreement.

6.2 **Own cost and risk.** Subject to, and in accordance with, the provisions of this Agreement, the Service Provider shall exercise its rights and perform its obligations included in the Services at its own cost and risk without recourse to the Municipality save as otherwise expressly provided for in this Agreement.

6.3 **Provision of Services.** During the currency of this Agreement, the Service Provider shall at its own cost and risk be solely responsible for procuring that the Services are provided to the User Departments and the Municipality: -

6.3.1 in accordance with the Service Levels;

6.3.2 in accordance with Good Industry Practice;

6.3.3 in accordance with the terms of this Agreement;

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8.3.1 pay the Municipality such penalty, if any, as may be stipulated in the SLA; and

8.3.2 provide all such additional resources as may be necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Municipality;

provided that, for the purposes of clarity, it is recorded that the Service Provider shall not be liable for any failure to meet a Service Level to the extent that such failure arises directly out of a failure of the Municipality to comply with its responsibilities set out in the SLA or this Agreement.

8.4 **Interim Phase.** Notwithstanding the provisions of this clause 8, it is recorded that during the Interim Phase the Service Provider will not be required to meet the Service Levels set out in this Agreement, but shall be obliged to:-

8.4.1 meet service levels that are reasonably practicable, taking into account whatever transitional arrangements that are put in place and agreed upon between the parties to enable a smooth implementation of this Agreement after completion of the Interim Phase; and

8.4.2 use its best endeavours to attempt to meet the Service Levels contemplated in this Agreement in order, as far as possible, to avoid compromising the Municipality's service delivery mandate.

9 WITHHOLDING OF PERFORMANCE & SET-OFF

9.1 **No withholding of Services.** Subject to the provisions of clause 10.3, the Service Provider shall not withhold any Services from the Municipality or any User Department during the currency of this Agreement.

9.2 Neither Party may retain or set off any amount owed to it by the other Party under this Agreement which has, by agreement or determination under this Agreement, fallen due and payable, against any amount due to the party in question by the other under this Agreement, unless agreed to the contrary at that particular point in time.

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annual leave and training. The Service Provider undertakes to avoid any disruption of the Services because of such circumstances.

- 11.3 **Replacement of Service Managers.** Either party may substitute Service Managers at its discretion or each will give reasonable notice to the other of such substitution and will provide replacement Staff of equivalent ability. Without derogating from the foregoing, should the Service Provider replace a Client Service Manager for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that a suitable period of handover and overlap, being not less than 30 (thirty) days, takes place between the new and the incumbent Client Service Manager. The costs of such handover shall be borne by the Service Provider.
- 11.4 **Access to premises.** The Municipality shall grant the Service Provider Staff reasonable access to all its premises for the purpose of providing the Services in terms of this Agreement.
- 11.5 **The Service Provider to adhere to security procedures of Municipality.** The Service Provider Staff shall at all times when on Municipality premises adhere to the standard health, safety and security procedures and guidelines applicable to Municipality Staff, as varied and conveyed by the Municipality to the Service Provider from time to time. It shall at all times be the responsibility of the Service Provider to notify its Staff of such changes and the Municipality shall not be liable for any failure by the Service Provider to do so. Should the Municipality at any time have reason to believe that any of the Service Provider's Staff is failing to comply with such standard health, safety and security procedures and guidelines, the Municipality may deny such person access to any or all of the Municipality's premises or systems and require the Service Provider to replace such person immediately.

12 PROCESSES & PROCEDURES

In providing and acquiring the Services in terms of this Agreement, the parties agree to adhere, inter alia, to the Service Procedures.

14.2 **Data may only be used in performance of the Services.** The Municipality's Data in the possession of the Service Provider, or to which the Service Provider may have access during the currency of this Agreement, may not be used by the Service Provider for any purposes whatsoever other than as may be specifically required to enable the Service Provider to comply with its obligations in terms of this Agreement.

14.3 **Preservation of integrity of data.** The Service Provider shall take reasonable precautions to preserve the integrity of the Municipality's Data under its control and to prevent any unauthorised access, corruption or loss of such data. Without limiting the foregoing, the Service Provider shall implement and maintain suitable: -

14.3.1 back up procedures;

14.3.2 security policies; and

14.3.3 disaster recovery plans;

14.3.4 to ensure the integrity of the data at all times.

14.4 **Return of data.** Upon termination of this Agreement, the Service Provider shall provide such data and database to the Municipality, in the format such data is in at the date of termination, or such other format as may be agreed between the parties, within 5 (five) days of such termination.

15 GOVERNANCE STRUCTURES

In order to facilitate the smooth and effective management of the relationship, the parties will implement and adhere to the contract governance structures set out in the Agreement, as amended from time to time.

16 CORRUPT ACTS

16.1 **Warranty.** The parties warrant that in entering into this Agreement they have not committed any Corrupt Act.

16.2 **Consequences of breach of warranty against Corrupt Acts.** If a party, any shareholder, any subcontractor or any affiliate of any of them or any of their Staff commits or is reasonably suspected (and such reasonable suspicion is supported by *prima facie* evidence confirming that reasonable

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previously performed by that employee to be performed by another person;

16.2.5 if the Corrupt Act is committed by any other person not specified in clauses 16.2.1 to 16.2.4 above but involved in the provision of Services as a subcontractor or supplier to any subcontractor or to the Service Provider, then the Municipality may give notice to the Service Provider of termination and this Agreement will terminate unless within 7 (seven) Business Days the Service Provider procures the termination of such person's involvement in the provision of Services and (if necessary) procures the performance of the relevant part of the Services by another person; and

16.2.6 any notice of termination under this clause shall specify:

16.2.6.1 the nature of the Corrupt Act;

16.2.6.2 the identity of the party or parties who the Municipality believes has committed the Corrupt Act; and

16.2.6.3 the date on which this Agreement will terminate in accordance with the applicable provisions of this clause.

16.2.6.4 Municipality's remedies. Without prejudice to its other rights or remedies under this Clause, the Municipality shall be entitled to recover from the Service Provider, the greater of:

16.2.6.5 the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and

16.2.7 any direct losses sustained by the Municipality in consequence of any breach of this clause 19 by the Service Provider.

16.3 **Proper commissions permissible.** Nothing contained in this clause 16 shall prevent the Service Provider from paying any proper commission or bonus to its Staff within the agreed terms of their employment.

16.4 **Service Provider to notify of Corrupt Acts.** The Service Provider shall notify the Municipality of the occurrence (and details) of any Corrupt Act promptly on the Service Provider becoming aware of its occurrence.

reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

17.2.4 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Service Provider as at the Signature Date having made all reasonable enquiries, threatened against it, which is likely to have a material adverse effect on the ability of the Service Provider to conduct the Services;

17.2.5 no proceedings or any other steps have been taken or, to the best of the knowledge of the Service Provider having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Service Provider, or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;

17.2.6 all information disclosed by or on behalf of the Service Provider to the Municipality at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Service Provider, is true, complete and accurate in all material respects and the Service Provider is not aware of any material facts or circumstances not disclosed to the Municipality which would, if disclosed, be likely to have an adverse effect on the Municipality's decision (acting reasonably) to award the Agreement to the Service Provider;

17.2.7 it possesses the requisite knowledge, skill and experience to perform the Services in a professional manner;

17.3 **The Service Provider to comply with all employment legislation, etc.**
The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its Service Provider and its relationship with the Municipality. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force. The Service Provider warrants further that it is not and will not in future be in contravention of any

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19 LIMITATIONS ON LIABILITY

- 19.1 If the Service Provider is expressly entitled to any indemnification under this Agreement for any losses incurred by it whether because of the conduct of the Municipality or any other cause, then the Service Provider's sole remedy in respect of such losses shall be its indemnity and, accordingly, it shall not be entitled to any other remedy for such losses.
- 19.2 Under no circumstances shall either party be liable for any special, indirect, consequential or like damages which may arise pursuant to this Agreement including, without limitation, any damages arising due to any loss of profits or loss of business.

20 MUNICIPALITY WARRANTIES

The Municipality hereby warrants to the Service Provider that as at the Signature Date:-

- 20.1 it has the power to execute the Agreement and any other documents referred to in the Agreement to which it is a party and has taken all necessary actions to authorise such execution;
- 20.2 it has the power to perform its obligations under the Agreement and any other documents referred to in the Agreement to which it is a party and has taken all necessary actions to authorise such performance;
- 20.3 it has not knowingly omitted to disclose to the Service Provider any material relevant information in its possession or under its control; and
- 20.4 hereby indemnifies the Service Provider against all loss, liability, costs, damage and expense of every nature whatever, including, but not limited to, attorney costs on the scale as between attorney and own client, disbursements and other charges) incurred by the Service Provider directly or indirectly as a result of and/or attributable to –
- 20.4.1 any employee of the Municipality claiming that his or her employment contract should transfer from the Municipality to the Service Provider; or
- 20.4.2 the actual transfer of the employment contract of any employee of the Municipality, whether by order of court or operation of law or for any other reason, in accordance with the provisions

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- 25.7.1 during normal business hours;
- 25.7.2 with the minimum of interference in the provision of the Services and the Service Provider's other operations.

26 CONFIDENTIAL INFORMATION

26.1 **Confidentiality obligation.** Each party ("**the Receiving Party**") must treat and hold as confidential all information which they may receive from the other party ("**the Disclosing Party**") or which becomes known to them concerning the Disclosing Party during the currency of this Agreement.

26.2 **Nature of the confidential information.** The confidential information of the Disclosing Party shall, without limitation, include:-

26.2.1 all software and associated material and documentation, including information contained therein;

26.2.2 all information relating to :-

26.2.2.1 the Disclosing Party's past, present and future research and development;

26.2.2.2 the Disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;

26.2.2.3 the terms and conditions of this Agreement;

26.2.2.4 the Municipality's Data.

26.3 **The Receiving Party's obligations with regard to confidential information.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information:-

26.3.1 it will only make the confidential information available to those of its Staff who are actively involved in the execution of this Agreement;

26.3.2 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Staff who need to be given access to confidential information, the confidential nature thereof;

26.3.3 subject to the right to make the confidential information available to their Staff under clause 26.3.1, they will not at any time, whether during

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26.7 **Indemnity in respect of confidential information.** The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage, which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or its Staff.

26.8 **Severability.** The provisions of this clause 29 are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force and effect for a period of 10 (ten) years after the date of termination.

27 INTELLECTUAL PROPERTY RIGHTS

27.1 Intellectual Property of the Municipality

27.1.1 All Intellectual Property Rights of the Municipality shall remain the sole property of the Municipality and nothing in this Agreement shall grant the Service Provider any licence to use or exploit same.

27.1.2 The Municipality may, on prior written application by the Service Provider, grant a non-exclusive revocable right and licence to the Service Provider to use the Municipality's trademarks and logos for a period not to exceed the term of this Agreement.

27.1.3 In order to establish and maintain standards of quality and propriety acceptable to the Municipality, in the event that the Service Provider desires to use the Municipality's trademarks or logos in any way, the Service Provider shall first submit the concept or a sample of the proposed use to the Municipality for approval, which shall be in the Municipality's sole discretion. The Municipality shall use reasonable endeavours to advise the Service Provider of its approval or disapproval of the concept or sample within 15 (fifteen) Business Days of its receipt of the concept or sample. If the Municipality approves the concept or sample, the Service Provider shall not depart therefrom in any respect without the Municipality's further prior written approval.

27.1.4 If at any time the Municipality revokes its approval for the specified use of any trademark or logo, the Service Provider shall forthwith discontinue all use of such trademark or logo.

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maintenance services to be provided in the future by or for the Municipality in relation to the Services (the "Permitted Purposes") for a period of 6 (six) months after the termination date of this Agreement in order for the Municipality to make alternate arrangements in regard to the replacement of the Service Provider's Intellectual Property. Those licences shall not be capable of transfer by the Municipality to third parties without the prior written consent of the Service Provider.

27.2.2 In the event that any Intellectual Property is not owned by the Service Provider but was specifically developed for the Project, whether or not it is Licensed Intellectual Property, the Service Provider shall ensure that it is at all times entitled to-

27.2.2.1 grant to the Municipality a non-exclusive licence, on terms no less favourable than those applicable to the Service Provider, to use that Intellectual Property for the Permitted Purposes for a period of 6 (six) months after the termination date of this Agreement in order for the Municipality to make alternate arrangements in regard to the replacement of the relevant Intellectual Property. Those licences shall not be capable of transfer by the Municipality to third parties for the Permitted Purpose without the prior written consent of the Service Provider.

27.3 **No aspect of the Services to infringe 3rd Party Intellectual Property Rights.** The Service Provider warrants that no aspect of the provision of Services in terms of this Agreement will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("**Third Party Proprietary Rights**"), and the Service Provider shall, at its cost, defend the Municipality against any claim that the Services infringe any such Third Party Proprietary Rights, provided that the Municipality gives prompt notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider hereby further indemnifies the Municipality against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Municipality in any action which is attributable to such claim and will reimburse the

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29 BREACH & REMEDIES

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.

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.

29.1.1.1

29.2 **Delivery of confidential information, data and proprietary material.** The Service Provider shall deliver to the Municipality, within 14 (fourteen) days of the date of termination of the Agreement, all confidential information, data and other proprietary material of the Municipality in its possession.

29.3 **Authorities and other rights granted to the Service Provider.** All authorities and other rights granted by the Municipality to the Service Provider shall continue whilst the Service Provider continues to provide the Services in accordance with this clause **Error! Reference source not found.**, whereafter such authorities and other rights shall automatically terminate.

30 FORCE MAJEURE

Performance of the obligations of either party hereto in terms of this Agreement shall be excused for as long as and to the extent that it is unable to do so because of any cause beyond its control which was not reasonably foreseeable and for which it is not responsible which, if qualifying as such shall include, without limitation, an act of God or state, or war (whether declared or not) or sabotage, fire, flood, riot, downtime of any communication infrastructure, governmental restriction, affecting the performance of such obligations, provided that –

30.1 the party claiming such inability –

30.1.1 shall, when that party knows that it is likely to occur and when it occurs, immediately give notice to the other party (which shall be confirmed in writing as soon as possible thereafter) detailing the

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- 30.5 the Municipality shall not be obliged to pay the Service Provider to the extent that the Service Provider does not provide the Services during the period of any such inability (whether arising in respect of the Municipality or the Service Provider).

31 NOTICES AND DOMICILIUM

- 31.1 **Addresses.** The parties select as their respective *domicilium citandi et executandi* the physical addresses set out on the cover sheet. Likewise the parties choose all the addresses set out on the cover sheet for the purposes of giving or sending any other notice provided for or required hereunder, or such other address or fax number as may be substituted by notice given as herein required.

- 31.2 **Change of Address.** Either party may by giving written notice to the other by hand, mail or by fax change its address details, provided that in respect of its physical address and fax number, the new address or number, as the case may be, shall be in the Republic of South Africa, and provided further that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.

- 31.3 **Deemed Receipt.** Any notice to be given by either party to the other shall be deemed to have been duly received by the other party –

31.3.1 if delivered to the addressee's domicilium by hand during Business Hours on a Business Day, on the date of delivery thereof, or

31.3.2 if sent by fax to the addressee on the first Business Day following the date of sending thereof;

32 EXCLUSIVITY

- 32.1 In consideration for the Service Provider rendering the Services in terms of this Agreement, the Municipality shall (save as may be provided expressly to the contrary in this Agreement), for the duration of this Agreement and during any period of termination notice given in terms of this Agreement, source all its VoIP requirements from the Service Provider. In this regard it

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and for which it would, but for the sub-contracting, be liable in terms of this Agreement;

34.2.2 such sub-contracting shall not have the effect of diluting or circumventing the provisions of clause ~~Error! Reference source not found.~~

34.2.3 the Service Provider shall at all times remain the sole point of contact for the Municipality in respect of the acquisition of Services by the Municipality.

35 INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

35.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

35.2 **References.** Unless otherwise stated, references to:-

35.2.1 clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement. References in Schedules to clauses shall, unless expressly provided otherwise, be deemed to be a reference to clauses in such Schedule;

35.2.2 "this Agreement" shall include this Agreement as amended, varied, novated or substituted in writing from time to time;

35.2.3 any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;

35.2.4 a "person" shall include any "Responsible Authority" or any public or professional organisation and shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;

35.3 **Enactments.** References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so

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SCHEDULE 1

PAYMENT MECHANISM

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1. DEFINITIONS

1.1. In this Schedule, unless inconsistent with or otherwise indicated by the context –

1.1.1. **"Additional Costs"** has the meaning set out in clause ~~Error!~~
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1.1.2. **"Municipality"** has the meaning ascribed to it in the Agreement;

1.1.3. **"CPI"** has the meaning ascribed to it in the Agreement;

1.1.4. **"Effective Date"** has the meaning ascribed to it in the Agreement;

1.1.5. **"Monthly Invoice"** means the invoice to be issued by the Service Provider in accordance with this document;

1.1.6. **"Pass Through Costs"** has the meaning set out in Clause ~~Error!~~
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1.1.7. **"Payment Mechanism Schedule"** means this Schedule to the Agreement;

1.1.8. **"Service Provider"** has the meaning ascribed to it in the Agreement;

1.1.9. **"Service Levels"** has the meaning ascribed thereto in the Agreement;

1.1.10. **"Service Month"** means each calendar month occurring during the term of the Agreement, provided that the first Service Month for the Contract Period shall be reckoned from the Service Period until the last day of the calendar month in which that Service Period occurs and the last Service Month shall be reckoned from the first day of a Service Month until the Expiry Date or Termination Date (as the case may be);

1.1.11. **"Service Period"** has the meaning ascribed to it in the Agreement;

1.1.12. **"Signature Date"** has the meaning ascribed to it in the Agreement

2. INTERPRETATION

2.1. Defined terms in the Agreement and any other Schedule used in this Schedule, but not defined above in Clause 1 shall, unless inconsistent with or otherwise indicated by the context, bear the same meaning as that contained in the Agreement or such other Schedule, as the case may be.

2.2. The rules of interpretation contained in clauses of the Agreement shall similarly apply to any terms contained in this Schedule

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- 4.10. The Municipality shall neither consider nor pay any amount/cost for services provided by the Service Provider, in instances where the service/cost or any portion thereof is invoiced more than 60 days after the service was provided.

5. LATE PAYMENTS

Each Party shall be entitled, without prejudice to any other right or remedy, to receive Penalty Interest on any payment not duly made pursuant to the terms of this Payment Mechanism Schedule and/or the Agreement on the due date calculated from the day on which payment was due up to and excluding the date of payment.

6. VAT

All amounts payable in terms of this Payment Mechanism Schedule and the Agreement shall be inclusive of value added tax at the prescribed rate unless expressly stated otherwise herein or in any Monthly Invoices submitted by the Service Provider to the Municipality.

7. RECONCILIATION OF DEDUCTIONS, PASS THROUGH COSTS AND ADDITIONAL COSTS AFTER THE CONTRACT PERIOD

- 7.1. Within 5 (five) Business Days following the expiry of the Contract Period or the Termination Date, whichever occurs earlier, the Service Provider shall deliver to the Municipality a reconciliation statement setting out in detail:

7.1.1. the Pass-Through Costs and Additional Costs paid by the Service Provider during any Service Month prior to the expiry of the Agreement or Termination Date (as the case may be) and which has not yet been claimed, together with all invoices and other relevant source documents which substantiate such Pass-Through Costs and Additional Costs; and

7.1.2. the net amount remaining after deducting the aggregate of all such Pass-Through Costs and Additional Costs.

- 7.2. In the event that the net sum in the Reconciliation Statement is a positive sum, the Service Provider shall pay such amount to the Municipality together with delivery of the Reconciliation Statement within 10 (ten) Business Days after the date of delivery of the Reconciliation Statement to the Municipality. If such sum is a negative sum, the Municipality will pay such amount to the Service Provider within 30 (thirty) Business Days after the date of delivery of the Reconciliation Statement to the Municipality, provided that such

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OUTPUT SPECIFICATIONS

WATERBERG DISTRICT MUNICIPALITY – SUPPLY AND CONFIGURATION OF VOIP SERVICES

1 PROVISION FOR VOIP SERVICES

Service Specification & Supplementary responsibility of the Service Provider	Duties & Responsibility of the Municipality	Penalty for failure to achieve service level	General
MOKOPANE OFFICE: 1 x Vodacom LTE Router (5GB monthly data) 1 x VPN connection to (WDM, Mogalakwena LM, Modimolle-Mookgophong LM, Bela-Bela LM, Thabazimbi LM, Lephalale LM, Lephalale Fire Station) 1 x VoIP services 1 x Porting of existing numbers 1 x per second billing 4 x Configuration of PBX WATERBERG DISTRICT HEAD OFFICE: 1 x 1Mb Voice Diginet Line 1 x VPN connection to (WDM, Mogalakwena LM, Modimolle-Mookgophong LM, Bela-Bela LM, Thabazimbi LM, Lephalale LM, Lephalale Fire Station) 1 x VoIP services 1 x Porting of existing numbers 4 x Configuration of PBX 1 x per second billing	LEPHALALE FIRE STATION: 1 x 1Mb Voice Diginet Line 1 x VPN connection to (WDM, Mogalakwena LM, Modimolle-Mookgophong LM, Bela-Bela LM, Thabazimbi LM, Lephalale LM, Lephalale Fire Station) 1 x VoIP services 1 x Porting of existing numbers 4 x Configuration of PBX 1 x per second billing IX INTERBRANCH CALLING CONFIGURATION.	The Municipality shall levy the applicable penalties for each instance that the Service Provider fails to meet the required service level or where a report/information is unavailable beyond the due date.	The Municipality pledges to exclusively source the services from the Service Provider, in the manner contemplated in the Agreement. The Municipality does not guarantee any quantities in relation to the procurement of services envisaged in this provision at any stage of the Service Period.

IX INTERBRANCH CALLING CONFIGURATION

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SCHEDULE 3

VARIATION PROCEDURE

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- 7.1 the provision of the Services in terms hereof will necessarily involve a number of minor on-going operational adjustments or changes ("**Operational Changes**"), as agreed to in writing between the Parties, and that the provision of Services would be unnecessarily delayed or frustrated if such operational changes are subject to the Variation Procedure. Accordingly, agreed operational changes will not be subject to the Variation Procedure, it being agreed that the Service Provider Lead Client Service Manager and Municipality Contract Manager will manage and implement operational changes by way of agreed form between the Parties. Either Party may, notwithstanding the provisions of this clause 7, require that operational changes be subject to the Variation Procedure detailed in this Schedule; and
- 7.2 any written variation of this Agreement signed by authorised representatives of the parties shall be valid and binding as between the parties notwithstanding the fact that the Variation Procedure has not been followed.
- 8 **The Service Provider Change Request.** Should the Service Provider wish to propose any change, it shall issue a Change Note detailing the services required to implement the change, the effects of the change and the effect that the changes, if implemented, will have on the Service Levels and on the costs of the Services. Thereafter the parties shall follow the procedure set out in paragraphs 5 to 7 of this Schedule, inclusive, *mutatis mutandis*.

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SCHEDULE 4

VOIP SERVICES SCHEDULE

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2. INTERPRETATION

- 2.1 Defined terms in the SERVICE Agreement and any other schedule or annexure used in this schedule, but not defined above in Clause ~~Error! Reference source not found.~~ shall, unless inconsistent with or otherwise indicated by the context, bear the same meaning as that contained in the SERVICE Agreement or such other schedule, as the case may be.
- 2.2 The rules of interpretation contained in the SERVICE Agreement shall similarly apply to any terms contained in this schedule

3. APPOINTMENT

- 3.1 The Municipality hereby appoints the Service Provider to provide the Managed Maintenance Services in accordance with the provisions of this Agreement and the Service Provider hereby accepts the appointment subject to the terms and conditions of this Agreement.
- 3.2 The Service Provider shall provide Managed Maintenance Services in respect of Supply & Configuration of VoIP services to the reasonable satisfaction of the Municipality in accordance with the provisions relating to the provision of Supply & Configuration of VoIP services in schedule 2 (*Output Specification*) of the SERVICE Agreement.
- 3.3 Nothing in this Agreement shall constitute an employer/employee relationship or an agency or a partnership between the Parties, nor shall it authorise either Party to incur liability on behalf of the other Party, save to the extent expressly provided in this Agreement.

4. COMMENCEMENT AND DURATION

Notwithstanding the Signature Date, this Agreement shall commence on the Service Commencement Date and shall endure for a period of 3 (three) years unless terminated in terms of clause ~~Error! Reference source not found.~~ (Force Majeure) or clause 8 (Breach) by either Party giving the other Party written notice of such termination, or in accordance with schedule 5 (Breach and Termination Procedure) of the SERVICE Agreement.

- 6.1.2 ensure the reasonable co-operation of all its employees with regard to the provision of the VoIP Services by the Service Provider in terms of the Agreement;

7. SERVICE FEES

- 7.1 The Municipality shall pay the fees in arrears, on the last business day of each month in which the Municipality receives a tax invoice detailing the relevant fees from the Service Provider
- 7.2 the Service Provider must ensure that the posting code, registration numbers and services rendered on the VoIP services are reflected on the tax invoice.
- 7.3 The fees shall be paid to such bank account nominated by the Service Provider in writing from time to time and at any time, without set-off, deduction or withholding of any nature, excluding disputed amounts, that the Parties may deem necessary, in accordance with clause 10 (Withholding of Performance & Set-off) of the SERVICE Agreement.
- 7.4 Any fees or amounts payable in terms of this Agreement excluding disputed amounts, which are not paid on the due date shall bear overdue interest at the prime rate plus two percent (2%), such interest to be calculated from the date on which the amount in question fell due for payment until the date on which it is paid by the Municipality to the Service Provider (both days inclusive), on the basis that such interest shall accrue daily and be compounded monthly.
- 7.5 The fees as recorded in clause ~~Error! Reference source not found.~~ will escalate annually on the anniversary of this Agreement by an amount equal to the latest available CPI, as reported by Statistics South Africa.

8. BREACH AND TERMINATION

- 8.1 Breach by either Party. Save as otherwise provided in this Agreement, should a Party ("the Defaulting Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days after receiving written notice from the other Party

Agreement, such dispute shall, save as otherwise provided herein, be determined in terms of the provisions of this clause 9 (Arbitration).

- 9.2 Any Party to this Agreement may demand that a dispute be determined in terms of this clause 9 (Arbitration) by written notice given to the other Party.
- 9.3 Subject to the provisions of this clause 9 (Arbitration), the arbitration shall be conducted in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (or failing it, any successor or equivalent body thereto) in force from time to time ("AFSA") and failing any such rules, shall otherwise be governed by the arbitration laws for the time being in force in the RSA from time to time.
- 9.4 This clause shall not preclude any Party from obtaining interim relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 9.5 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should any Party by written notice given to the other Party require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 9.6 The arbitrator shall be, if the matter in dispute is principally -
- 9.6.1 a legal matter, a practising advocate, attorney or retired Judge within the Limpopo jurisdiction of at least 15 (fifteen) years' standing;
- 9.6.2 an accounting matter, a practising chartered accountant within the Limpopo jurisdiction of at least 15 (fifteen) years' standing;
- 9.6.3 any other matter, any independent person,
- 9.6.4 agreed upon between the Parties to the dispute.
- 9.7 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration is demanded, the matter shall be deemed to be a legal matter.
- 9.8 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 9.2 above, any of the

9.16.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

9.17 The Parties agree that the written demand by either Party in terms of clause 9.2 that the dispute be submitted to arbitration is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, No 68 of 1969.

10. **APPLICABLE LAW AND JURISDICTION**

10.1 This Agreement (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the Parties in terms of and arising out of the conclusion, breach and termination of the provisions of this Agreement), shall be interpreted and governed in all respects by the laws of the RSA.

10.2 Save as otherwise provided herein, the Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Limpopo Division, Polokwane in respect of any action or legal proceedings which may arise out of or in connection with this Agreement, its interpretation, validity or determination hereof.

11. **ASSIGNMENT**

11.1 The Parties shall not be entitled to cede or assign any of their respective rights and obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.