AGREEMENT FOR THE SUPPLY AND DELIVERY OF UNIFORM AND PPE

entered into between

WATERBERG DISTRICT MUNICIPALITY

Waterberg District Municipality

on the Go for Growth

and

MOOREJOY(PTY) LIMITED

(Registration No 2017/045763/07)

for the supply and delivery of Uniform and PPE

WATERBERG DISTRICT MUNICIPALITY

(the "Municipality")

Physical Address	HARRY GWALA STREET, MODIMOLLE, 0510		
Signed at	MODIMOLLE	Date	22 Jan 2020
Name	MZ Namate		
Designation	ACTING MUNICIPAL MANAGER		

And

MOOREJOY (PTY) LTD

(the "Service Provider")

Registration number	2017/045763/07		
Physical Address	7550 Ext 8, Modimolle, 0510		
Signed at	Modimolle	Date	22 Jan 2020
Name	PIET JOHANNES CHAUKE		
Designation	DIRECTOR		

IN TERMS OF WHICH THE PARTIES AGREE TO THE TERMS AND CONDITIONS AND SCHEDULES ATTACHED HERETO

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AGREEMENT STRUCTURE

PART A: Agreement for the supply and delivery of Uniform and PPE.

PART B: Schedules

1) Payment Mechanism
2) Output Specifications
3) Variation Procedure
4) Managed Maintenance 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 delivery of Uniform and PPE 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/2019/20-13 inviting proposals from the private sector to undertake the Supply and Delivery of Uniform and PPE

(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:

PART A – Supply and Delivery Service AGREEMENT

1 DEFINITIONS

In this Agreement the following expressions and words have the meanings assigned to them below and derivative expressions and words will have the corresponding meaning: -

1.1 "**Accessory**" in relation to a Vehicle, means any item of equipment that is additional to the standard vehicle specifications by the Vehicle's manufacturer and requested by the Municipality in writing, but excluding Attachments and OBE;

1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa and its successors in title, provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Pretoria Bar Council;

1.3 **"Agreement"** means this document, Terms of Reference issued by the Municipality, the proposal submitted by the service provider and the appointment letter, comprising: -

1.3.1 this Service Agreement;

1.3.2 the Service Provider's proposal;

1.3.3 Letter of appointment;

1.3.4 the annexures and schedules to this Agreement; and

1.3.5 together with amendments thereto, executed by the parties in accordance with Variation Procedure;

1.4 **"Attachment"** means an item of equipment (itself an assembly of parts), which is mechanically attached or fixed to a vehicle and becomes a permanent structural part of the vehicle, such that if the item were to be removed it would reconfigure the functional dimensions of the vehicle to which it is attached. Also known as "Fitments";

1.5 **"Business Day"** means any day in the RSA which is not a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994. All references in this Agreement to days shall be deemed to be to calendar days, unless specifically stipulated as being Business Days;

1.6 **"Business Hours"** shall mean the hours from 07h00 to 18h00 on Business Days;

1.7 **"Call Centre"** shall mean the facility established and operated by the Service Provider for the purposes of receiving and capturing service calls from the Municipality with respect to the Services;

1.8 **"the Municipality"** means the Waterberg District Municipality

1.9 "**the Municipality's Data**" means collectively: -

1.9.1 data provided and/or generated by the Municipality or any third party and delivered or sent to the Service Provider, or otherwise received or collected by the Service Provider, relating to the Municipality in respect of this Agreement; and

1.9.2 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;

1.10 **"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;

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

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

1.13 "**Corrupt Act**" means:

1.13.1 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:

1.13.1.1 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

1.13.1.2 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;

1.13.1.3 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 behalf, or to its knowledge, unless before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Municipality;

1.13.2 committing any offence:

1.13.2.1 under any law from time to time dealing with bribery, corruption or extortion;

1.13.2.2 under any law creating offences in respect of fraudulent acts; or

1.13.2.3 at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Municipality or any other Public Body; or

1.13.2.4 defrauding or attempting to defraud or conspiring to defraud the Municipality or any other Public Body;

1.14 **"CPI"** means the weighted average of the consumer price index as published from time to time by Statistics South Africa, which is referred to as "CPI – Metropolitan areas – all items" in Statistical release PO141; in the event that:

1.14.1 such index ceases to be published; or

1.14.2 the Municipality and the Service Provider agree that due to a change in circumstances such index is no longer representative,

1.14.3 then from the date when the index was last published, the parties shall use such other index as agreed between them or, failing agreement,

as determined by an Independent Expert, who shall be a firm of auditors;

1.15 **"Default"** means the failure by a party to comply with its obligation in terms of this Agreement or any negligent or wilful act or omission of the party in question or its personnel;

1.16 "**Effective Date**" means the later of the business day immediately following the date on which the last of the suspensive condition in clause 2 below are either fulfilled or waived or such future date as to be agreed between the Parties;

1.17 "**Excluded Attachment**" means any item of equipment recorded as such in terms of this Agreement and which is owned by the Municipality and is not subject to any Services or Service Levels by the Service Provider, unless as agreed between the Parties;

1.18 "**Fleet Manager**" or "**FM**" means a Municipality representative appointed to manage the Municipality's fleet, irrespective of such person's organizational designation;

1.19

1.20 **"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;

1.21 "**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:-

1.21.1.1 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;

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

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

1.21.1.4 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

1.21.1.5 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;

1.22 "**Initial Uniform and PPE Order**" means the first order of Vehicles placed by the Municipality at Effective Date, or as soon as is reasonably practicable after the Effective Date, in accordance with specifications, pricing and quantities set out in the agreement;

1.23 "**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 similar rights or obligations of whatsoever nature, whether capable of registration or not, but including any right to register same;

1.24 **"PPE"** means, Personal Protective Equipment- is Protective clothing, helmets, goggles, or other garmets or equipment designed to protect the weare's body from injury or infection;

1.25 "**Uniform**" means a particular set of clothes that has to be worn by members of the same organisation or group of people performing a particular task;

1.26 "**Penalty Interest**" means interest at the Prime Interest Rate plus 2%, on any overdue amount, calculated from the due date of payment of such amount to the date of actual payment thereof (both days inclusive), calculated on a daily basis and compounded monthly in arrear;

1.27 **"Pricing Principles"** means the principles applicable to the costing of the Services provided by the Service Provider pursuant to this Agreement, as recorded in schedule 1 (Payment Mechanism);

1.28 **"Prime Interest Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Nedbank Group Limited, as certified by any manager of such bank, calculated daily and compounded monthly in arrears;

1.29 "**Service Provider**" means Moorejoy (Pty) Limited with registration number 2017/045763/07;

1.30 **"Responsible Authority"** means any ministry, minister, organ of state, official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;

1.31 **"RSA"** means the Republic of South Africa;

1.32 **"Services"** means the services to be provided by the Service Provider to the Municipality specified in this Agreement and the SLA with respect to the supply and delivery of Uniform and PPE;

1.33 "**Service Commencement**" means the actual commencement of the Services, subsequent to delivery of Uniform and or PPE to Waterberg Municipality in accordance with the delivery service level set out in paragraph 1 of Schedule 2 (*Output Specification*) of the Agreement;

1.34 "**Service Commencement Date**" means the date of Service Commencement as stated in the agreement, and which shall match the date specified for delivery of a Vehicle which shall not exceed twelve (12) months from the Initial Vehicle Order, in the applicable Vehicle Schedule;

1.35 **"Service Levels"** means the stipulated criteria applicable to the Services, as set out in the SLA;

1.36 **"Service Managers"** means collectively, the respective officials designated by the parties for the purposes of managing ongoing operational aspects of the Agreement;

1.37 "**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;

1.38 **"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;

1.39 **"Signature Date"** means the date of signature of this Agreement by both parties but if signed on different dates, the last of such dates;

1.40 **"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;

1.41 **"Staff"** means, in respect of a party, any officer, employee, agent, consultant or sub-contractor of such party;

1.42 "**Termination Date**" means either of the following:

1.42.1 the date on which this Agreement expires due to the effluxion of time;

1.42.2 if the Service Provider is provisionally or finally wound up or placed in business rescue; or

1.42.3 terminates for any other reason as contemplated in this Agreement;

whichever is the earlier date;

1.43 "**User Departments**" means the Planning and Economic Development, Social Development and Community Services, Cooperate Support and Shared Services, Infrastructure Development and Executive support 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;

1.44 **"Variation Procedure"** means the procedure referred to in clause 7 of this Agreement and as recorded in schedule 3 (Variation Procedure) hereto;

2 SUSPENSIVE CONDITIONS

2.1 **Condition**. This Agreement is subject to fulfilment of the following suspensive condition:

2.1.1 that the Municipality provides the Service Provider with documentation evidencing that the Municipality has the required power and authority to conclude the Agreement.

2.2 **Parties to use best endeavours**. The parties will use their best endeavours and shall negotiate in good faith to procure the fulfilment of the suspensive condition as soon as reasonably possible after the Signature Date and shall at all times act in good faith to procure same.

2.3 **Consequences of failure**. Should the suspensive condition fail to be fulfilled as contemplated in this clause 2.2 within 90 (ninety days) of the Signature Date, or within such longer period as the parties may agree in writing, the provisions of this Agreement, save for those which by their nature and content seek to protect the ongoing interests of the parties, shall automatically lapse and be of no force or effect and no party shall have any claim against the other in terms hereof or arising therefrom.

2.4 **Fulfilment**. Upon fulfilment of the suspensive condition, the parties shall sign a certificate confirming that the suspensive condition have been fulfilled and that the Agreement is unconditional, provided that any failure so to sign shall only constitute *prima facie* evidence of the continued conditional nature of this Agreement.

3 APPOINTMENT

The Municipality hereby appoints the Service Provider, who accepts such appointment, to provide the Services in accordance with the terms and conditions of this Agreement.

4 DURATION

4.1 This Agreement shall commence on the Effective Date and, subject to rights of termination stipulated herein, shall continue for a period of 3 (three) years from the Service Commencement Date whereafter it shall automatically terminate, provided that the Municipality may extend the Agreement on 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 in respect of each applicable Vehicle Schedule.

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 33;

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

5.2.2 the Service Provider;

be deprived of any indemnity, claim, counterclaim, right, action, remedy, exception, limitation of liability or defence due to the structure agreed and implemented above.

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5.3 **Quasi-contractual relationship.** The relationship between the Service Provider and each User Department shall thus constitute a quasi-contractual relationship with the effect that, whilst no contractual nexus factually exists between the Service Provider and such User Department, the parties shall conduct themselves as if a contract on the terms and conditions of this Agreement exists between them and to the extent that any claim arises, same shall, to the extent required, be instituted, disputed and resolved between the Municipality and the Service Provider on the basis that each shall have all rights and duties in law and this Agreement as if they were the principal parties to the dispute.

5.4 **Clarification.** Without derogating from the generality of the aforegoing, it is thus confirmed that to the extent that:

5.4.1 any User Department is guilty of any act or omission which would, were it a party to this Agreement, constitute a breach of this Agreement, such breach shall be deemed to be a breach of this Agreement by the Municipality;

5.4.2 the Service Provider is guilty of any act or omission in respect of a User Department, which would, were such User Department a party to this Agreement, constitute a breach of this Agreement, such breach shall be deemed to be a breach of its obligations to the Municipality in terms of this Agreement;

5.4.3 any User Department suffers any loss, harm or damage due to any act or omission of the Service Provider pursuant to this Agreement such loss, harm or damage shall be deemed to be that of the Municipality and the Municipality shall not be deprived a cause of action merely because the Municipality has not suffered such loss itself, provided that in such event:

5.4.3.1 the Municipality shall procure that the User Department fulfils all its obligations in terms of the common law in respect of such damages, including 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;

6.3.4 in a manner that is not likely to cause death, injury to the health of any person or damage to property or the environment;

6.3.5 in a manner that is consistent with the Municipality discharging its statutory functions and duties; and

6.3.6 in compliance with all applicable law and the Consents;

6.4 **Co-operation.** Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

7 VARIATION PROCEDURE

7.1 **Amendments to this Agreement**. Should the parties at any stage wish to amend the provisions of this Agreement including the provisions of this clause, they shall do so by way of a written amendment signed by the authorised representatives of each party. Accordingly no variation, addition or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each party.

7.2 **Change in scope of services.** Should any party wish to propose any change to the scope or nature of Services, such party shall adhere to the Variation Procedure in Schedule 3.

8 SERVICE LEVELS

8.1 **Undertaking to achieve Service Levels.** The Service Provider undertakes that in providing the Services to the Municipality, it will achieve the Service Levels set out in the SLA.

8.2 **Penalties**. Without detracting from any rights or remedies which the parties may have, the parties agree to the payment of penalties in accordance with the provisions of this Agreement.

8.3 **Obligations upon failure to meet Service Levels.** Should the Service Provider at any time fail to meet the Service Levels due to its Default, the Service Provider will, without prejudice to the Municipality's other rights and remedies:-

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.

9.3 **Exception.** Notwithstanding the provisions of clause 9.1 and without prejudice to any of its other rights in terms of this agreement or at law, should the Municipality, in the absence of any –

9.3.1 bona fide dispute between the parties in respect thereof;

9.3.2 material breach of this Agreement by the Service Provider which has been notified by the Municipality to the Service Provider.

fail to make payment on the due date of any amount due to the Service Provider under this Agreement, the Service Provider shall notify the Contract Manager of

such failure. If the Municipality fails to pay such outstanding amounts within 14 (fourteen) days of receipt by the Contract Manager of such notice, the Service Provider shall be entitled to withhold Services from, the User Department in question; provided that such disabling shall be done before 6h00 on any day and further provided that this shall not be done in regard to any situations that may lead to injuries or loss of life.

10 REPORTS

10.1 **Provision of Information**. The Service Provider shall provide accurate information to the Municipality and the User Departments in order to enable them to manage their dispersion of PPE and uniform. Such information shall be provided on the basis set out in the SLA and shall reflect information which is current to within 48 (forty eight) hours.

10.2 **Management Reports**. The Service Provider shall furnish the Municipality with the reports set out in the SLA on the terms and format stipulated therein.

11 SERVICE PROVIDER'S STAFF

11.1 **Suitably Qualified Staff.** The Service Provider shall employ suitably qualified and trained Staff to provide the Services to the Municipality in terms of this Agreement, provided that they shall be entitled, in their discretion, to allocate Staff resources in accordance with the skills and knowledge required, provided further that any exercise of such discretion shall not negatively impact upon the provision of the Services to the Municipality.

11.2 **The Service Provider Staff**. The Service Provider Staff providing the Services may be absent for short periods of time for reasons including 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 aforegoing, 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.

13 CONSIDERATION

13.1 **Fees and payment terms.** For the Services provided to the Municipality by the Service Provider in terms of this Agreement, the Municipality will pay the Service Provider the fees set out in the Agreement, on the terms and conditions set out in schedule 1 (*Payment Mechanism*) hereto.

13.2 The Municipality hereby agrees to remunerate the Service Provider strictly in accordance with the Tender proposal for the Supply and Delivery of Uniform and PPE as follows:

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13.2.1 The Municipality shall effect **60% payment** to the Service Provider upon the latter's performance of its delivery of first obligations i.e. delivery of uniform and PPE as per approval of the site inspection meeting;

13.2.2 The Municipality shall effect **40% payment** to the Service Provider upon the fittings made by all recipients of the goods.

13.3 **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 Agreement on the due date calculated from the day after the date on which payment was due up to and including the date of payment.

13.4 **Dispute.** If either party disputes all or any part of the fees or charges payable by the Municipality to the Service Provider pursuant to this Agreement the undisputed amount shall be paid by the Municipality in accordance with this clause 14.1, and the provisions of this clause shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within 10 (ten) Business Days of the dispute arising. If they fail so to resolve it, either party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. Following resolution of the dispute, the Service Provider shall issue credit notes in respect of the agreed or determined amount. The agreed or determined amount shall be paid by the Municipality to the Service Provider, together with interest on such amount at the Prime Interest Rate calculated from the day after the date on which payment was due up to and including the date of payment.

13.5 **Value added tax.** Any invoice or other request for payment of monies due to the Service Provider under this Agreement shall comply with the requirements of the Value Added Tax Act, 1991.

14 DATA

14.1 **Ownership.** Ownership in all the Municipality's Data, whether under its control or not, shall continue to vest in the Municipality and the Service Provider shall not obtain any proprietary rights in such data. Without derogating from the aforegoing, the database (but not, for the avoidance of doubt, the database application) containing the up to date information in

respect of the Vehicles, including all back-up copies of such data, shall vest in the Municipality.

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 aforegoing, 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 INSURANCE

15.1 The Service Provider shall submit a quotation from its insurers to the Municipality.

15.2 The parties are to negotiate and agree the insurance services, premium payable and the relevant exclusions for the relevant year with respect to the Vehicles. On agreement, the insurance services shall then be adopted by the Municipality.

15.3 On agreement and adoption of the insurance services in accordance with clause 15.2, on the anniversary of the insurance services the parties shall

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undertake to perform an annual review and benchmark the insurance services prior to the renewal of the insurance services.

15.4 In the event that the Parties are unable to agree on the insurance services, the premium and the relevant exclusions, then the Municipality shall be entitled to procure insurance services from any other insurance provider of its choice.

15.5 In the event that the Municipality exercises its option as contained in clause 15.44, then the Municipality is to provide the Service Provider with the following, proof:

15.5.1 that insurance has been reviewed annually;

15.5.2 of insurance of all Vehicles;

15.5.3 that the premium has been paid in full; and

15.5.4 that insurance provided is of a level and standard acceptable to the Service Provider.

15.5.5 elect to purchase a vehicle of similar specifications, mileage and functionality as the vehicle which is being replaced.

16 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.

17 CORRUPT ACTS

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

17.2 **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 suspicion on a balance of probabilities) by the other party of having committed any Corrupt Act, then:

17.2.1 if the Corrupt Act is committed by the Service Provider, any shareholder of the Service Provider or any member of their Staff acting under the authority of or with the knowledge of a director of the Service Provider or such shareholder, as the case may be, then in any such case, the Municipality may terminate this Agreement with immediate effect by giving written notice to the Service Provider;

17.2.2 if the Corrupt Act is committed by a Staff member of the Service Provider or of any shareholder acting of his or her own accord, then in any such case, the Municipality may give written notice to the Service Provider of termination and this Agreement will terminate, unless within 7 (seven) Business Days of the Service Provider's receipt of such notice that member of Staff's involvement in the provision of Services is terminated and (if necessary) the performance of any part of the Services previously performed by him or her is performed by another person;

17.2.3 if the Corrupt Act is committed by a subcontractor, director of a subcontractor or an employee of a subcontractor acting under the authority or with the knowledge of a director of that subcontractor, then in any such case, the Municipality may give written notice to the Service Provider of termination and this Agreement will terminate, unless within 14 (fourteen) Business Days of its receipt of such notice the Service Provider terminates the relevant subcontract and procures the performance of the relevant part of the Services by another person;

17.2.4 if the Corrupt Act is committed by an employee of a subcontractor acting of his or her own accord, then the Municipality may give notice to the Service Provider of termination and this Agreement will terminate, unless within 7 (seven) Business Days of its receipt of such notice the Service Provider procures the termination of that employee's involvement in the provision of Services and (if necessary) procures the performance of that part of the Services previously performed by that employee to be performed by another person;

17.2.5 if the Corrupt Act is committed by any other person not specified in clauses 17.2.1 to 17.2.4 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

17.2.6 any notice of termination under this clause shall specify:

17.2.6.1 the nature of the Corrupt Act;

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

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

17.2.6.4 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:

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

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

17.3 **Proper commissions permissible**. Nothing contained in this clause 17 shall prevent the Service Provider from paying any proper commission or bonus to its Staff within the agreed terms of their employment.

17.4 **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.

18 THE SERVICE PROVIDER'S WARRANTIES

18.1 **General** The Service Provider gives the Municipality the warranties, representations and undertakings stipulated in this clause 18 (each a **"Warranty"**) on the basis that -

18.1.1 each Warranty is deemed to be an essential contractual undertaking by the Service Provider to ensure that each Warranty is true and correct;

18.1.2 each such Warranty shall be deemed to be material;

18.1.3 insofar as any Warranty is promissory or relates to a future event, such Warranty shall be deemed conclusively to have been given as at the due date for fulfilment of the promise or for the happening of the event, as the case may be;

18.1.4 each such Warranty shall be a separate and independent Warranty and shall not be limited by any reference to, or inference from, the terms of any other Warranty or by any other provision of this Agreement; and

18.1.5 each such Warranty shall, save as expressly stipulated otherwise, be given as at the date of signature of this Agreement and shall be deemed to be repeated on each day during the term of this Agreement.

18.2 **Service Provider warranties.** The Service Provider warrants that:

18.2.1 it has taken all necessary actions to authorise its execution of this Agreement;

18.2.2 the execution and performance of this Agreement do not and will not contravene any provision of the memorandum of incorporation of the Service Provider as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Service Provider as at the Signature Date;

18.2.3 all Consents required by the Service Provider for the provision by it of the Services are in full force and effect as at the Signature Date, save for any Consents which are not required under applicable law to be obtained by the Signature Date; provided that the Service Provider warrants that it knows of no reason (having made all

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;

18.2.4 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;

18.2.5 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;

18.2.6 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;

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

18.2.8 the maintenance of all Vehicles undertaken by them pursuant to this Agreement shall be conducted in accordance with Good Industry Practice.

18.3 **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

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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 of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the Municipality advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the Municipality informed regarding the steps taken and the implementation and the result thereof.

18.4 **No temporary employment service.** The Service Provider warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any Staff supplied by the Service Provider shall be an independent Service Provider as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. The Service Provider shall not have the authority to act on behalf of the Municipality or to bind the Municipality in any manner whatsoever without the Municipality's prior written consent and shall not be considered as having employee status for the purpose of any benefit applicable to the Municipality employees generally.

19 INDEMNITIES

19.1 **General indemnity**. The parties ("the Indemnifying Party") indemnify each other ("the Indemnified Party") and shall keep each other indemnified at all times against all losses sustained by either party in consequence of any:

19.1.1 loss of or damage to property;

19.1.2 breach of a statutory duty arising under applicable law;

19.1.3 claim for or in respect of the death or personal injury of any individual; or

19.1.4 any breach by the Indemnifying Party of any warranties given by it in this Agreement;

(including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance by the other Indemnifying Party of any Services, save to the extent caused by the negligence or wilful misconduct of the Indemnified

Party or by a breach by the Indemnified Party of an express provision of this Agreement.

19.2 **Section 198(4) indemnity**. The Service Provider indemnifies and shall keep the Municipality indemnified at all times against all losses sustained by the Municipality in consequence of any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against the Municipality by a Staff of the Service Provider. In the event that the Service Provider or any of its Service Provider's rendering of the Services to the Municipality, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Service Provider shall immediately inform the Municipality thereof and on request supply the Municipality with a copy of any award made pursuant to such proceedings or agreement and any documentation that the Municipality may request in respect thereof;

19.3 **Indemnity in respect of Competition issues**. The Service Provider hereby confirms that it has acquired professional opinion to the effect that no notification to the competition authorities is required if this Agreement is awarded to it. Accordingly the Service Provider hereby indemnifies and holds the Municipality and all relevant officials harmless against any fine, penalty or other payment which the Municipality or such officials may be required to pay to the competition authorities whether as a result of the incorrectness of the opinion, or otherwise, including any and all legal costs incurred by the Municipality pursuant thereto.

19.4 **Liability and indemnity**. The Service Provider shall be liable for all loss, harm or damage which arises in respect of or due to any form of PPE or uniform being in the Service Provider's possession during currency of this Agreement, provided that it is not caused by the Municipality or the Municipality's employees in any way. The Service Provider hereby indemnifies and holds the Municipality harmless against all:-

19.4.1 direct loss or damage which may be sustained by the Municipality or its Staff; and

19.4.2 loss, actions, costs, claims, demands, expenses, liabilities or any amounts whatsoever which may become payable by the Municipality to any other person as a result of a claim made against the Municipality or its Staff,

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arising out of the Service Provider's possession of the relevant Uniform and PPE.

19.5 **Process in the event of a claim.** Should any claim be made against an Indemnified Party by any person in terms of this clause 19:-

19.5.1 the Indemnified Party shall give the Indemnifying Party written notice thereof within 30 (thirty) days of becoming aware of such claim to enable the Indemnifying Party to take steps to contest it;

19.5.2 the Indemnifying Party may, within 7 (seven) days of receipt of the notice in terms of clause 19.5, elect, in writing, to contest an indemnified claim in the name of the Indemnified Party and may control the proceedings in respect thereof (including any appeals), provided that the Indemnifying Party indemnifies the Indemnified Party and holds Indemnified Party harmless (in a manner reasonably acceptable to the Indemnified Party) against all and any costs (including without being limited to attorney and own client costs and any other costs not recoverable on taxation) which may be incurred by or awarded against the Indemnified Party as a consequence of the defence of any indemnified claim;

19.5.3 the Indemnifying Party shall pay the Indemnified Party the amount of an indemnified claim within 7 (seven) days of receipt of the notification referred to in clause 19.5, unless the Indemnifying Party contests the indemnified claim in terms of clause 19.5.2, in which case the Indemnifying Party shall pay to the Indemnified Party the amount of the indemnified claim within 7 (seven) days after any final judgement or order is granted against the Indemnified Party, provided that in those circumstances where a claim is contested and despite such contest, the claim is payable in law, the Indemnifying Party shall pay to the Indemnified Party the amount of the claim as soon as it is payable, provided further that should such amount be repaid to the Indemnified Party, the Indemnified Party shall refund such amount to the Indemnifying Party within 7 (seven) days of receiving such amount;

19.5.4 the Indemnified Party shall furnish the Indemnifying Party with all reasonable assistance and shall co-operate in every reasonable way to facilitate the defence and/or settlement of any such claim,

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action, proceeding or suit provided that the Indemnifying Party shall reimburse and pay to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party in respect of such assistance and co-operation. Without derogating from the aforegoing, the Indemnified Party shall not: -

19.5.4.1 make any admissions of liability in respect of such claims;

19.5.4.2 knowingly (which term shall include instances where the Indemnified Party ought reasonably to have known) act or omit to act in a manner which may prejudice the Indemnifying Party's rights.

20 LIMITATIONS ON LIABILITY

20.1 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.

20.2 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.

21 MUNICIPALITY WARRANTIES

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

21.1 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;

21.2 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;

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21.3 it has not knowingly omitted to disclose to the Service Provider any material relevant information in its possession or under its control; and

21.4 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 –

21.4.1 any employee of the Municipality claiming that his or her employment contract should transfer from the Municipality to the Service Provider; or

21.4.2 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 of section 197 of the Labour Relations Act, Act 66 of 1995, as amended as a result of the conclusion or implementation of this Agreement.

22 CONSENTS

22.1 **Each party's responsibility**. Each party shall be responsible for:

22.1.1 obtaining all Consents which may be required by it in connection with its obligations under this Agreement;

22.1.2 maintaining in full force and effect all Consents required by it; and

22.1.3 implementing all Consents required by it in accordance with their respective terms within the period of their validity.

22.2 **Mutual assistance**. Each party shall provide all such assistance to the other as may be reasonably necessary for that other party to obtain all the Consents referred to in Clause 22.1.1 required by that party; provided, however, that the party providing assistance shall incur no liability for the costs of obtaining or maintaining, or any delay, failure or inability of the other party to obtain or maintain any such Consents.

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23 OBLIGATIONS OF THE SERVICE PROVIDER.

23.1 **Problem and Negative Trend Identification.** Should the Service Provider encounter any problem or identify any trend in relation to any of the Services, which could cause, or which indicates the likely occurrence of, a disruption to the Municipality's or any of the User Department's business or the availability of the Services, it must report such matter to the Municipality in writing without delay. Thereafter, the parties will agree on corrective measures to be taken to address or pre-empt the problem, as the case may be, in accordance with the Variation Procedure.

23.2 **Items required for the Services.** Save as provided otherwise, the Service Provider shall supply all items required for the provision of the Services at its sole cost and risk.

24 OBLIGATIONS OF THE MUNICIPALITY

The Municipality shall ensure that any party over which it has direct control performs its duties and functions referred to in this Agreement in a manner which enables the Service Provider to comply with its obligations to provide the Services.

25 REVIEW OF THE AGREEMENT

It is fundamental to the success of this Agreement and the parties' ongoing relationship that this Agreement reflects and continues to reflect their prevailing business imperatives and capabilities. Consequently the parties agree that for the purposes of reviewing this Agreement, the Services or any other matter arising out of this Agreement, they will, at a minimum, formally meet within 30 (thirty) days of the anniversary of the Effective Date (or at such other time as the parties may agree) each year during the currency of this Agreement provided that any and all changes agreed at such meetings shall be executed in accordance with the Variation Procedure.

26 INSPECTION

26.1 **The Service Provider to maintain full set of records.** The Service Provider shall ensure that a full and accurate set of records is kept of all Services performed in terms of this Agreement for a period of 5 (five) years after the provision of any such Services. In addition, the Service Provider

shall, in order to enable the Municipality to determine whether the provisions of this Agreement are being complied with:

26.1.1 provide the Municipality with such information as it may reasonably require;

26.1.2 allow the Municipality to inspect and take copies of any documents of the Service Provider relating to the Services, including all data, information, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;

26.1.3 allow the Municipality or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given and the Service Provider's employees consenting thereto.

26.2 **Exclusions.** Notwithstanding the provisions of clause 26.1, the Municipality shall not be entitled to access the financial statements and balance sheet of the Service Provider, provided that should the Municipality require to inspect such excluded records, it may request the Service Provider's auditors, or the forensic services division of any auditing firm of international standing and repute, to scrutinise such records to determine the existence of any irregularity suspected by the Municipality, provided that any party other than the Service Provider's auditors shall be obliged to maintain the confidentiality of the aforementioned excluded records.

26.3 **The Service Provider to provide reasonable assistance.** Where any information required for the inspection in terms of this clause 26 is kept by means of a computer, the Service Provider shall give the Municipality such reasonable assistance it requires to facilitate inspection and the taking of copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

26.4 **Information to be provided in specified form.** Any information required to be provided to the Municipality pursuant to this clause 26 shall be provided by the Service Provider, at the Municipality's cost, in such form (including a form otherwise than in writing) as the Municipality may reasonably specify.

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26.5 **The Service Provider to allow access to premises.** Where, pursuant to any provision contained in this clause 26, the Service Provider is required to allow the Municipality to inspect or take copies of any item of any description the relevant party shall allow the Municipality, or its authorised representatives, such access to any premises of such parties as is necessary to enable the Municipality to inspect or take copies of the items.

26.6 **Cost of inspection.** The cost of any inspection contemplated in terms of this clause shall be for the account of the Municipality unless any material irregularity or failure on the part of the Service Provider is determined by the Municipality in the course of such inspection.

26.7 **Minimum interference**. The inspection contemplated in this clause 26 will be conducted:-

26.7.1 during normal business hours;

26.7.2 with the minimum of interference in the provision of the Services and the Service Provider's other operations.

27 CONFIDENTIAL INFORMATION

27.1 **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.

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

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

27.2.2 all information relating to :-

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

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

27.2.2.3 the terms and conditions of this Agreement;

27.2.2.4 the Municipality's Data.

27.3 **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:-

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

27.3.2 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;

27.3.3 subject to the right to make the confidential information available to their Staff under clause 27.3.1, they will not at any time, whether during this Agreement or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;

27.3.4 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Staff, will be, and will at all times remain, the sole and absolute property of such party and shall be promptly handed over to such party when no longer required for the purposes of this Agreement.

27.4 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Agreement, the Receiving Party will deliver to the Disclosing Party or, at the Disclosing Party's option, destroy all originals and copies of the Disclosing Party's confidential information in its possession.

27.5 **Information which will not constitute confidential information.** The foregoing obligations shall not apply to any information which:-

27.5.1 is lawfully in the public domain at the time of disclosure;

27.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

27.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully

entitled without any restriction on disclosure to disclose such confidential information;

27.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order; or

27.5.5 is disclosed by the Municipality to any Responsible Authority.

27.6 **Disclosure to professional advisors.** Nothing in this clause shall preclude the parties from disclosing the confidential information:-

27.6.1 to their professional advisors in the bona fide course of seeking business advice and professional advice; or

27.6.2 to the extent reasonably necessary to enforce their rights in terms of this Agreement.

27.7 **Disclosure to financier.** The provisions of this clause 29 shall not prohibit the disclosure by the Service Provider to the financial institution that is providing financing for the relevant Vehicles of such general information as may reasonably be required by such financial institution for purposes of providing such funding. Provided that:-

27.7.1 such information shall be of a general nature and shall not include Abuse figures;

27.7.2 disclosure by the Service Provider in such circumstances shall however be subject to the Service Provider ensuring that any such information is used by the financial institution only for the above purposes and that the financial institution similarly keeps such information confidential.

27.8 **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.

27.9 **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.

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28 INTELLECTUAL PROPERTY RIGHTS

28.1 Intellectual Property of the Municipality

28.1.1 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.

28.1.2 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.

28.1.3 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.

28.1.4 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. The costs incurred by the Service Provider as a result of such revocation shall be borne by the Service Provider if the grounds for the revocation include any ground described in Clause 28.1.5.

28.1.5 The Municipality may revoke its approval upon 3 (three) Business Days written notice to the Service Provider if the Service Provider, any sub Service Provider or any of its or its sub Service Provider's' Staff commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency and, in

the Municipality's reasonable opinion, materially prejudices the reputation and public goodwill of the Municipality.

28.1.6 The Service Provider acknowledges that the names of the Municipality (the "Protected Names") are associated with and peculiar to the Municipality and are the intellectual property of the Municipality. Consequently, the Service Provider agrees that the sole and exclusive ownership of the Protected Names shall vest in the Municipality.

28.1.7 In circumstances where the Service Provider utilises any of the Protected Names, either on its own or in combination or association with any other name, it shall do so only in terms of this Agreement and with the prior approval of the Municipality. On termination or expiry of this Agreement, the Service Provider shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.

28.2 **Intellectual property of the Service Provider.** All Intellectual Property Rights of the Service Provider shall remain the sole property of the Service Provider and nothing in this Agreement shall grant the Municipality any licence to use or exploit same, provided that:

28.2.1 The Service Provider shall, in respect of all Intellectual Property that is owned by it, on termination of this Agreement in accordance with its terms, grant to the Municipality a non-exclusive, royalty free licence to use the Service Provider's Intellectual Property for the Services, or any operational and 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.

28.2.2 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-

28.2.2.1 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.

28.3 **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 Municipality with all costs reasonably incurred by the Municipality in connection with any such action.

28.4 **Process in the event of a claim.** Should any claim be made against the Municipality by any person in terms of clause 28.2, the Municipality shall give the Service Provider written notice thereof within 10 (ten) days of becoming aware of such claim to enable the Service Provider to take steps to contest it. The provisions of clauses 19.5.2 to 19.5.4 shall apply mutatis mutandis in respect of any claims made in terms of this clause 28.

28.5 **Infringement of 3rd Party rights**. Should any third party succeed in its claim for the infringement of any Third Party Proprietary Rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe:-

28.5.1 obtain for the Municipality the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

28.5.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

28.5.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

28.5.4 withdraw the subject of infringement.

29 DISPUTE RESOLUTION

The parties accept that disputes may arise between them during the course of this Agreement. Any dispute which cannot be resolved between the respective service managers of the parties shall be referred to mediation within 5 (five) days of either party declaring such a dispute. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration.

30 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 aforestated time period, the other party may cancel this Agreement and claim recovery of damages.

30.1.1.1

30.2 **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.

30.3 **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.

31 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 –

31.1 the party claiming such inability –

31.1.1 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 circumstances on which it relies and an estimate of the likely duration of such inability; and

31.1.2 shall, when that party knows that such inability is likely to terminate and when it terminates, immediately give notice thereof to the other party, which shall be confirmed in writing as soon thereafter as is possible;

31.2 the parties shall co-operate together and use all reasonable efforts to overcome, or failing which, to minimise the effect of such inability;

31.3 if the Service Provider is claiming such inability and the effect thereof has not been so overcome or minimised to the satisfaction of the Municipality –

31.3.1 within a period of 7 (seven) days, then the Municipality may, but shall not be obliged, to engage, one or more third parties to perform the obligations of the Service Provider hereunder affected by such inability which would otherwise have been performed in terms of this Agreement by the Service Provider, for only as long as and to the extent that the Service Provider is unable to perform the same;

31.3.2 within a period of 30 (thirty) days, then either party hereto may (as its sole remedy therefor):-

31.3.2.1 to the extent that such inability relates to a particular User Department, cancel this Agreement in respect of the provision of Services to such User Department forthwith by written notice;

31.3.2.2 to the extent that such inability relates to the entire Agreement, cancel the entire Agreement forthwith by written notice;

31.3.2.3 provided that neither party shall be liable for any damages arising out of such termination;

31.4 neither party hereto shall be obliged to subsequently perform any obligation hereunder not performed as a consequence of and during any such inability, and the duration of this Agreement shall not be extended as a consequence of any such inability; and

31.5 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).

32 NOTICES AND DOMICILIUM

32.1 **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.

32.2 **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.

32.3 **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 –

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

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

33 EXCLUSIVITY

33.1 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 uniform and PPE from the Service Provider. In this regard it is recorded that this exclusivity shall relate solely to the provision by the Service Provider of uniform and PPE. The Municipality shall accordingly be entitled to source additional Uniform and PPE from a third party only if and to the extent that:

33.1.1 the Contractor is unable to fulfil such requirements in which event the loss of exclusivity shall apply only to the extent that, and for so long as, the Service Provider cannot perform the particular requirement in question under this Agreement; or

33.1.2 the Municipality is acting in terms of a right granted in terms of the SLA, to source some goods(uniform and PPE) from a Third Party.

provided that the Municipality may, subject to giving the Service Provider prior written notice thereof, undertake the outsourcing of a particular service, an aspect of which may include the provision of a service provided that:

33.1.3 the main purpose of that outsourcing is to obtain a service; and

33.1.4 the outsourcing shall not be used to circumvent the provisions of this Agreement, in particular the principle that the Municipality shall source all its fleet requirements exclusively from the Service Provider.

33.2 **Remedy**. If the Service Provider, on receipt of the relevant notice, believes that the outsourcing conflicts with the above it may prohibit the Municipality from undertaking the outsourcing in question unless the Municipality is able to prove on a balance of probabilities, that this is not the case.

33.3 .

34 NO PARTNERSHIP

Nothing in this Agreement shall be construed as creating a partnership between the parties and, save as expressly provided otherwise in terms of this Agreement, no party shall have any authority to incur any liability on behalf of any other or to pledge the credit of any other party.

35 ASSIGNMENT AND SUB-CONTRACTING

35.1 **Restriction on assignment or transfer of this Agreement**. No party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the aforementioned, the Service Provider shall be entitled to cede its rights and delegate its obligations under this Agreement in security to the financial institution providing funding, whether by way of a financial lease or otherwise to the Service Provider in respect of the Service Provider's obligations in

terms of this Agreement as security for the Service Provider's obligations to that financial institution in respect of the funding.

35.2 **Right of the Service Provider to sub-contract.** The Service Provider may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-

35.2.1 such sub-contracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the Municipality harmless against any loss, harm or damage which the Municipality may suffer as a result of such sub-contracting and for which it would, but for the sub-contracting, be liable in terms of this Agreement;

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

35.2.3 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.

36 INTERPRETATION

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

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

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

36.2.1 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;

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

36.2.3 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;

36.2.4 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;

36.3 **Enactments.** References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.

36.4 **References to persons**. References to:-

36.4.1 persons shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;

36.4.2 any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;

36.4.3 the singular shall include the plural and vice versa;

36.4.4 any one gender shall include a reference to all other genders.

36.5 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.

36.6 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.

36.7 **Definitions apply in Schedules.** Expressions defined in clause 1 shall bear the same meanings in the Schedules to this Agreement. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause 1.

36.8 **Approvals and consents.** Where the approval or consent of any party is required in terms of this Agreement, the parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the party who is required to give same.

36.9 **Neutral construction.** The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

36.10 **The term "including**". The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of general words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.

36.11 **Common meaning**. Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry specific practice, will be interpreted in accordance with their generally accepted meanings.

36.12 **Use of email.** The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

37 GENERAL

37.1 **Whole Agreement**. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and no party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

37.2 **Waiver.** No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

37.3 **Severability.** Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

37.4 **Non-solicitation.** The Service Provider shall not during the currency of this Agreement offer any employment, consultancy or other contract to a person:

37.4.1 who is an official of the Municipality, any User Department or any other municipal entity under the sole or shared control of the Municipality; or

37.4.2 who was such an official at any time during a period of one year before the offer is made.

37.5

37.6 **Applicable Law.** This Agreement will be governed by and construed in accordance with the law of the RSA and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

37.7 **Jurisdiction.** Subject to clause 29, the parties hereto hereby consent and submit to the jurisdiction of the Limpopo High Court of South Africa in any dispute arising from or in connection with this Agreement.

37.8 **Survival.** Notwithstanding termination of this Agreement, any clause which, from the context, contemplates on-going rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

37.9 **Good Faith**. The parties shall at all times during the currency of this Agreement owe each other a duty of good faith.

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 5 (*Additional Costs*) of this Schedule;

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. **"Make Good Costs"** means the costs of repairs and maintenance for reasons other than normal wear and tear on vehicles, fitments and accessories, and which is a result of driver Abuse;

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

1.1.7. "**Pass Through Costs**" has the meaning set out in Clause 4 of this Schedule *(Pass Through Costs)*;

1.1.8. "**Payment Mechanism Schedule**" means this Schedule to the Agreement;

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

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

1.1.11. "**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);

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

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

1.1.14. "**Unitary Payment**" has the meaning set out in Clause 3 of this Schedule.

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

3. UNITARY PAYMENT

3.1. Where any amount is calculated in accordance with this Payment Mechanism Schedule, the result of such calculation shall be the actual kilometres travelled by the Vehicle.

3.2. With effect from the Service Month and in respect of each Service Level the Monthly Unitary Payment payable by the Municipality to the Service Provider shall ramp up in accordance with the following table

3.1.1.				
3.1.1.1.	Supply and Delivery of uniform and PPE – expressed in Rands and cents	i. All costs in accordance with the pricing schedule in the tender document of the Service Provider.	No adjustments on rates shall be made.	Monthly, in arrears

4. PASS THROUGH COSTS

4.1. Pass Through Costs are costs falling within the categories of costs listed below, that are incurred by the Service Provider in the provision of or relating to the Services Levels, which shall be reimbursed by the Municipality to the Service Provider in accordance with the provisions of this Clause:

4.1.1. Costs incurred in connection with the e-Tolling processes that have been or will be implemented in some Gauteng;

4.1.2. Costs pertaining to the Administrative Adjudication of Road Traffic Offences Act 46 of 1998, or any similar piece of legislation having an impact on the Agreement;

4.1.3. licensing and other legislated vehicle specific costs; or

4.1.4. any insurance excess which shall become due and payable as a result of insurance claims in respect of the Lease Vehicles.

4.2. No pass through costs shall be incurred by the Municipality;

5. ADDITIONAL COSTS

5.1. Additional Costs are costs falling within the categories of costs listed below which are incurred by the Service Provider in the provision of or relating to the Services:

5.1.1. any Accessory which added, or any modification is made to a Vehicle.

5.1.2. where the Service Provider is required to make any modification to a Vehicle and expends an amount in connection with such modification in order to comply with any statute, ordinance, by-law or regulation;

5.1.3. Make Good Costs; and

5.1.4. the replacement of tyres as and when required and confirmed by the Municipality but limited to the set the Vehicle was delivered with, in order to comply with any applicable law, other than the replacement of tyres due to damage to tyre treads and sidewalls.

5.2. No additional costs shall be incurred by the Municipality.

6. MONTHLY INVOICING

6.1. The Service Provider shall invoice the Municipality for services in accordance with the relevant pricing principles set out in this agreement.

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6.2. The Service Provider shall submit Monthly invoices electronically for all amounts due per fleet category by no later than the first working day of each subsequent month.

6.3. The Municipality shall settle amounts due to the Service Provider in terms of invoices issued, by Electronic Funds Transfer in accordance with the approved municipal accounting practices within 20 (twenty) working days on receipt of invoices should there be no query.

6.4. All payments to be made to the Service Provider shall be made to the following bank account [Standard Bank South Africa account number - 610189700, Branch code 015001]

6.5. The Service Provider shall be entitled from time to time and at any time to change the above account to another bank account, on written notice to the Municipality.

7. DISPUTED INVOICED AMOUNTS, CREDIT NOTES AND CHARGES

7.1. The Municipality shall query any invoice in writing within 20 days of receiving the invoice and shall settle amounts due to the Service Provider in terms of invoices issued less the value of the disputed charges.

7.2. The Service Provider shall provide credit notes in an electronic format in respect of all disputed charges paid by the Municipality and subsequently settled against the Service Provider.

7.3. The Service Provider shall provide supporting documents for every credit note to assist the Municipality to verify the credits for accuracy and validity.

7.4. The Service Provider shall respond to queries lodged by the Municipality regarding invoices, credit notes, disputed charges, and/or overcharges within 30 days of such queries being lodged.

7.5. Disputes with respect to invoices that cannot be resolved between the parties shall be determined in accordance with Annexure 3 (dispute resolution procedure) of the Agreement.

7.6. The Municipality shall not withhold payment of the undisputed portion of any invoice.

7.7. The Service Provider shall, in respect of any disputed charges settled or determined in favour of the Municipality, issue a credit note for the relevant amount within 7 days of settlement date.

7.8. The Municipality shall settle amounts due within 7 days, where a disputed charge is settled in favour of the Service Provider.

7.9. The Service Provider shall pay all refunds or penalties directly into the Municipality's bank accounts nominated in writing for this purpose.

7.10. 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.

8. 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.

9. 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.

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

10.1. 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:

10.1.1. 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

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

10.2. No pass through costs or additional costs shall be incurred by the Municipality.

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11. INDEXATION

11.1. Unless otherwise stated, all escalations due in respect of any amount or the Unitary Payment shall be applied in accordance with the CPI.

12. BENCHMARKING

No benchmarking will be done as all the costs are fixed..

SCHEDULE 3

VARIATION PROCEDURE

1 ***Changes to Services***. During the currency of this Agreement, events may occur which require a change to the Services or Service Levels. No such change shall be implemented unless the Parties comply with the provisions of this Schedule. Changes to the Agreement shall not be subject to the Variation Procedure, but shall be undertaken on the basis set out in clause **Error! Reference source not found.** of the Agreement.

2 ***Party desiring change***. Subject to the Authority Levels delegated to the responsible official(s), should the Municipality wish to propose any change to the provisions of this Agreement or should a User Department wish to amend any provision of the Output Specification, such party shall address a written proposal to the Service Provider detailing the desired changes or amendments ("**Change Request**").

3 ***Change Request.*** Such Change Request shall specify the reasons for the change and describe the change in sufficient detail to enable the Service Provider to formulate a response. The Service Provider shall investigate the likely impact of any proposed changes upon the Services and Service Levels;

4 ***Change Note***. The Service Provider shall, within 14 (fourteen) days of receiving a Change Request, 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.

5 ***No change effective until sign-off***. Neither the Service Provider nor the Municipality nor any User Department shall be entitled to proceed or require the implementation of any change to the Services or Service Levels pursuant to this Schedule until such change and all matters relating to such change have been agreed to in writing between the Parties, and all the necessary consents and approvals, as required, have been obtained. Pending sign-off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither party shall be obliged to agree to any change proposed by the other party but the Parties will not unreasonably delay or withhold their agreement to a proposed change.

6 ***Sign-off.*** The parties shall discuss the proposed changes and shall effect such changes to the Service Provider's Change Note as agreed. The Change Note in respect of the change shall then be considered by the Municipality or User Department concerned and approved or rejected in its discretion, provided that if a final proposal:-

6.1 is accepted by the Municipality, it shall be signed off by duly authorised representatives of the parties and incorporated into this Agreement;

6.2 is rejected by the Municipality, the Services shall continue to be provided on the existing basis.

7 ***Exceptions***. Notwithstanding the above, the Parties acknowledge and agree that:

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*.