



SERVICE LEVEL AGREEMENT

By and Between

LESEDI LOCAL MUNICIPALITY

A local municipality duly established as an organ of state within the local sphere of government and in accordance with the provisions of section 12 of the Local Government: Municipal Structures Act, 1998 (Act no. 117 of 1998), (**hereinafter "The Municipality"**) represented herein by Advocate Gugulethu Thimane in her capacity as the acting Municipal Manager duly authorized thereto by a resolution of council

And

EW COMMUNICATION (PTY) LTD

A private company duly incorporated and registered as such in accordance with the company laws of the Republic of South Africa with registration number **1999/005760/07** Duly represented herein by **Marius Durant** in his capacity as the **Director** duly authorized thereto. (**hereinafter "The Service Provider"**)

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Document Owner:	Lesedi Local Municipality
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1 INTERPRETATION

- 1.1 The headings to the clauses in this Agreement are for reference purposes only and shall not affect the interpretation of any part thereof.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:
- 1.2.1 "Agreement" means this Agreement together with all schedules and annexures thereto, as may be agreed by the Parties;
- 1.2.2 "Business Day" means any day except a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.2.3 "Operating Hours" means 7:30 – 16:00 on every business day.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations 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 of this Agreement.
- 1.4 Unless inconsistent with the context, an expression which denotes:
- 1.4.1 Any gender includes the other genders;
- 1.4.2 A natural person includes a juristic person;
- 1.4.3 The singular includes the plural and vice versa.



2 APPOINTMENT

- 2.1 The Municipality has appointed the Service Provider in terms of open tender system advert that was advertised **08/02/2019**.
- 2.1.1 The Customer hereby engages **EWC Communication (Pty) Ltd**, who undertakes to perform the Web Based Fleet Management Services on Municipal Fleet with effect from the **01/06/2019** after installation of **143** units.
- 2.2 The appointment of the Service Provider shall be conditional the requirement that the Service Provider shall at all times maintain or improve its BEE status as presented in the tender proposal and should the BEE status change, such changes shall be communicated to the Municipality. To the extent that the Service Provider's BEE status reduces, the Municipality reserves the right to terminate the Agreement.
- 2.3 The Service Provider shall exercise due skill, care and diligence in the performance of the services required. All services carried out are subject to these terms except to the extent that any amendments or variations are expressly agreed to in writing.


3 COMMENCEMENT AND DURATION

This Agreement shall commence on 01/07/2019 and shall continue for 36 (twelve) months or until terminated by either party in terms of this Agreement.

4 SERVICE LEVELS

- 4.1 The services to be delivered to the Municipality shall be in line with and in accordance to all the terms contained in the Tender Document, annexed to this Agreement as Annexure "A". This shall apply to the provision of Web Based Fleet Management Services to the Municipality's Fleet which require the use of the FMS system.

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- 4.2 The provision of services shall be operated from the Municipality's IT Section situated at No 1 C/o H/F Verwoerd and Dupreez Street, Heidelberg CBD ("the Premises).
- 4.3 The Parties herewith agree that the Municipality shall retain ownership of all improvements made to the software on the Premises by the Service Provider and that the Service Provider shall have no claim of whatever nature regarding any improvements made to the facilities.
- 4.4 The Services shall always and continuously be available during the Operating Hours and the Service Provider shall at all times be responsible for the proper functioning of the Website.
- 4.5 The Service Provider shall at all times be responsible for providing tolerable services and resources for the provision of the services.
- 4.6 The Service Provider shall provide the Municipality with the contact details of the person on standby, should an emergency necessitate the provision of services outside Operating Hours.
- 4.7 Any complaints must be attended to within 24 (Twenty Four) hours after being notified by the Municipality that services are not accessible.
- 4.8 All goods and materials provided in terms of this Agreement shall comply with the latest relevant Codes the South African Standards Specifications.
- 4.9 The Municipality reserves the right to request compliance certificates in respect of any item or component used for the delivery of services to determine whether it complies with relevant SABS Codes. Should the tested goods meet the specification, the Municipality shall be responsible for the costs of such tests. Should the tested items, however fail to meet the specifications, the Service Provider shall be liable for the costs of the said tests. Furthermore,


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should the tested items not meet the specifications the Service Provider shall, at its own costs, be responsible for removal of any defective items, as well as for replacement of the defective item with an item which meets the relevant specifications.

- 4.10 The Service Provider shall be responsible for all consequential damages which the Municipality may incur due to non-performance or negligence on the side of the Service Provider or any representative, employee, contractor or agent of the Service Provider.
- 4.11 The Service Provider shall represent and interpreted the Fleet Management System at any internal and external hearing should such request be mandatory by the employer.


6 FEES AND PAYMENT TERMS

- 6.1 The Service Provider shall submit invoices on a monthly basis.
- 6.2 Payment of invoices shall be made no later than 30 (thirty) days after submission of invoice.
- 6.3 Maintenance and Bureau service charges may be increased annually, Thirty (30) days' notice of any such increase shall be given to the Customer. The increase will apply at the beginning of each Calendar year.

7 OBLIGATIONS OF THE MUNICIPALITY

The Municipality shall have the obligation to ensure that:

- 7.1 Payment for services provided and invoices submitted are processed timeously.
- 7.2 Access is granted at all times to the Service Provider's representatives, contractors, agents and personnel for purposes of carrying out their duties.

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7.3 Provide or facilitate the provision of complete, accurate and timely information in order for the Service Provider to carry out the services.

8 RISK

The Service Provider shall assume all risk for the safety of its employees, representatives, agents or contractors executing any of the services or duties in terms of this Agreement.

9 CONFIDENTIALITY

9.1 The Parties will not disclose any confidential information about each other to any person, firm, company or the media and will not use such information other than for the purposes of this Agreement, subject always to prior specific authorization in writing by either Party.


9.2 The provisions shall not apply to information which:-

9.2.1 is in the public domain by way other than by default of the Parties;

9.2.2 Is obtained from a bona fide third party having the right to disseminate such information;

9.2.3 Is or had already been independently generated by the Parties;

9.2.4 Is required to be disclosed by law or valid order of a court of a competent jurisdiction or the request of any governmental or other regulatory authority or agency in which event the parties shall notify each other as promptly as possible and shall use their best endeavours to seek confidential treatment of such confidential information.

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9.3 The obligations contained in this clause shall endure beyond the termination of this Agreement without any time limit, except and until any confidential information enters the public domain.

10 RELATIONSHIP BETWEEN THE PARTIES

The relationship between the Parties does not amount to either Party being the agent of the other. No partnership is created hereby. Neither Party shall be entitled to bind the other in any of its dealings with third parties. None of the Parties shall make representations contrary to the terms of this Agreement and neither of the Parties shall be liable to such third parties by reason of any representation, act or omission of the other which is contrary to the provisions hereof.

11 INDEMNITY

11.1 The Service Provider shall indemnify the Municipality in respect of the following:-

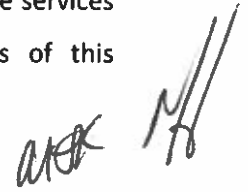
11.1.1 any negligent acts or omissions committed by the Service Provider's employees, representatives, contractors or agents;

11.1.2 any legal expenses or expenditure reasonably incurred in connection with any actions or claims emanating from this Agreement.

11.2 Under no circumstances shall the Municipality be held liable for any indirect or consequential damages or liabilities of whatever nature which may result in the following:-

11.2.1 Any injuries or death of any person during the provision of the services or the execution of any duty or responsibility in terms of this Agreement;

11.2.2 Penalties due to non-compliance with relevant legislation;



11.2.3 Claims that may arise during or after the termination of this Agreement due to the Service Provider, its employees, representatives, contractors or agents' activities.

12 WARRANTIES

12.1 The Service Provider warrants that the services referred to in this Agreement shall be performed with due diligence and in a professional manner.

12.2 The Service Provider warrants that it has the necessary skills, resources and expertise to render the services for which this Agreement is entered into.

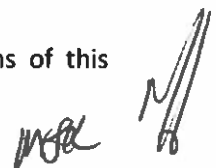
12.3 No other warranties or representations made by any of the Parties or their employees, representatives, contractors or agents to each other shall be binding on any of the Parties hereto, whether such representations or warranties were furnished expressly, or by way of implications, unless reduced to writing and signed by and on behalf of the Parties concerned.

13. VARIATION

13.1 This is the entire Agreement between the parties and no amendment or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties. The Employer may order variations to the services in writing or may request the service provider to submit proposals, including the time and cost implications, for variations to the services.

14. STANDARD OF WORK

14.1 The Service Provider shall render services to the municipality in terms of this agreement in a professional manner.

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14.2 The Service Provider shall ensure at all times that there is adequate supervision, quality control and direction in the execution of such services.

14.3 The Service Provider shall exhibit competency and efficiency, as well as devoting such attention as may be required by the complexity or otherwise of such services, and shall apply such skill and expertise as is necessary to carry out the services produced under this Agreement.

14.4 It is further recorded that the service provider shall agree to periodic performance review undertaken by the municipality to ensure that the desired end product is produced in terms of this Agreement.

14.5 Both parties shall on a quarterly basis, hold performance and problems identification meeting to monitor performance by the service provider, to identify and resolve problems which might have been experienced in that specific month.

15 TERMINATION AND CANCELLATION

15.1 Notwithstanding anything to the contrary contained herein, either Party may cancel this Agreement in writing without having to give notice if either Party, or any one of the Parties, commits an act of insolvency. For the Purpose of this clause, an act of insolvency shall occur if the Party concerned:

15.2 Is provisionally or finally liquidated or placed under judicial management;

15.3 makes any assignment for the benefit of its creditors;

15.4 Has any pertinent license to conduct business suspended, removed or impaired by any order or verdict of any regulatory or judicial authority; or

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- 15.5 Makes or attempts to make or recommends any offer of compromise with its creditors; or
- 15.6 Gives any notice of, or takes any steps to convene a meeting of its shareholders to adopt a resolution placing it in liquidation or under judicial management, in either case whether provisionally, voluntary or finally; or
- 15.7 Commits an act which would, if such party were a natural person, be an act of insolvency in terms of Section 8 of the Insolvency Act, 1936; or
- 15.8 Any of the assets of either Party are subjected to judicial attachment and the Party concerned fails to procure the release of such assets from attachment within 60 (sixty) days of their attachment, except that if the Party concerned provides evidence on an ongoing basis to the reasonable satisfaction to the other Party, that steps have been initiated within 60 (sixty) days to appeal, review or rescind the attachment order and to procure the suspension of the attachment. The period of 60 (sixty) days shall run from the date the attachment order becomes final or the attempt to procure the suspension of the attachment fails.

16 BREACH

- 16.1 Except if stated otherwise in this Agreement, if either of the Parties (the defaulting Party) fails to take steps reasonably satisfactory to the other Party (the aggrieved Party) to remedy the material breach of any of the defaulting Party's obligations under this Agreement within a period of 7 (seven) days of receiving a notice from the aggrieved Party specifying the nature of the material breach and calling for it to be remedied, the aggrieved Party shall be entitled to cancel the Agreement against the defaulting Party or to claim immediate payment and/or specific performance by the defaulting Party of all the defaulting Party's obligations whether or not the due date for payment and/or

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performance shall have arrived, in either event without prejudice to the aggrieved Party's rights to claim damages.

17 SETTLEMENT OF DISPUTES

17.1 In the event of a dispute arising amongst the parties, the parties undertake to negotiate in good faith with one another in an attempt to resolve such dispute. If such negotiations fail or the parties are unable to resolve the dispute within 3 working days (being any day excluding Saturdays, Sundays, and public holidays) after the dispute has arisen, the dispute shall be referred to mediation in accordance with the following provisions:

17.2 The mediator shall be a person with some experience in the industry to which the dispute relates;


17.3 The mediator shall be nominated by written agreement between the parties, and failing such agreement within 7 (seven) days after the dispute having been referred to arbitration.

18. INDULGENCES AND WAIVER

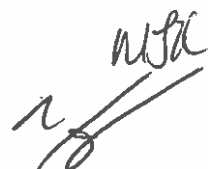
18.1 Should any party to this Agreement extend relaxation or indulgence towards the other party, such relaxation or indulgence may not be construed as a waiver of such other party's rights under this Agreement.

18.2 The preceding is without prejudice to such other rights as the aggrieved Party may have in law.

Signed at Lesedi on this 24 Day of June 2019



GUGU THIMANE
In her capacity as Acting Municipal Manager



Duly Authorised on behalf of Lesedi Local Municipality

Witnesses:

1. [Signature] 2. [Signature]

Signed at Lesedi on this 24 Day of June 2019

Duly Authorised on behalf of the Service Provider EW Communication (Pty) Ltd

Name: M. DURANDT Capacity: DIRECTOR OPERATIONS

Signature: [Signature] Date: 24/06/2019

Witnesses:
1. _____ 2. _____

APPENDIX A

MAINTENANCE AGREEMENT SUPPORTING DOCUMENTS

1. Installation list.
2. Tender Document
3. Appointment Letter
4. Acceptance Letter

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