



SERVICE LEVEL AGREEMENT

ENTERED INTO BETWEEN

LESEDI LOCAL MUNICIPALITY

AND

**MNB CHARTERED ACCOUNTANTS INC.
(2011/001344/21)**

(Service Provider)

A small, handwritten signature or set of initials in the bottom right corner of the page.

SERVICE LEVEL AGREEMENT

**BETWEEN: LESEDI LOCAL MUNICIPALITY AND MNB CHARTERED ACCOUNTANTS INC.
OUTSOURCED INTERNAL AUDIT SERVICES – 09 JANUARY 2019 TO 08 JANUARY 2022**

1. PARTIES

The Parties to this Agreement are Lesedi Local Municipality and MNB Chartered Accountants Inc.

- 1.1. **LESEDI**, a category B Municipality established as such in accordance with the provisions of section 12 of Local Government: Municipal Structures Act, Act 117 of 2008 as amended, herein represented by the Acting **Municipal Manager**, Advocate Gugulethu Thimane, being duly authorised thereto (the "**Lesedi**"); and
- 1.2. **MNB Chartered Accountants Inc.**, a company with registration number **2011/001344/21** duly registered in accordance with the company laws of the Republic of South Africa, with its registered address at **No.38 Boereneef Street, Vorna Valley, Midrand, 1686**, herein represented by Glen Ntuli in his capacity as Chief Executive Officer being duly authorised thereto ("**Service Provider**").

2. RECORDAL

It is recorded that:

- 2.1. **Lesedi** procured the Internal Audit services from MNB Chartered Accountants and has accordingly complied with procurement processes.
- 2.2. The **Service Provider** is hereby appointed to provide the above mentioned services.

3. DEFINITIONS AND INTERPRETATION

3.1. Definitions

In this **Agreement**, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

"**Agreement**" means this **Agreement** including **Annexures** and **Addendum(s)**;

"**Lesedi**" means the Lesedi Local Municipality;

"**Duration of Agreement**" is from 09 January 2019 to 08 January 2022; notwithstanding the signature by the parties;

"**Failure**" means any failure by the **Service Provider** to perform its obligation in terms of this **Agreement**;

"**Good Industry Practice**" applying, in relation to the manner in which the obligations are rendered, the standards, practices, methods and procedures conforming to applicable Law, and exercising



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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;

"**Law**" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, governmental agency or authority in any relevant jurisdiction within the Republic of South Africa;

"**Obligations**" means obligations as set out in clause 6;

"**Parties**" means **Lesedi** and **Service Provider**, and any reference to "**Party**" shall refer to one of the relevant **Parties** as required by the context;

"**Project**" means the procured services as described herein **Annexure A**;

"**Service Provider Proposal**" means the initial financial proposal in respect of the **Project** attached hereto as **Annexure B**, which sets out the broad outline of the **Project** and will be used as a guide document for implementation of the **Project**;

"**this Agreement**" means this **Agreement** between the **Parties** together with the **Annexures** and **Addendums** thereto.

3.2. Interpretation

This **Agreement** shall be interpreted according to the following provisions, unless the context requires otherwise:

- 3.2.1. 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**.
- 3.2.2. References to "**Parties**" shall include the **Parties'** respective successors-in-title and, if permitted in this **Agreement**, their respective cessionaries and assignees,
- 3.2.3. References to a "**person**" 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,
- 3.2.4. References to "clauses", "**sub-clauses**", "**Annexures**" and "**Addendums**" are references to the **clauses, sub-clauses, Annexures** and **Addendums** of this **Agreement**.
- 3.2.5. References to any other contract or document shall include, if applicable (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,
- 3.2.6. Words in parentheses and italics appearing after a clause reference or a reference to a schedule are inserted for esse of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.



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- 3.2.7. The headings of **clauses, sub-clauses, Annexures and Addendums** are included for convenience only and shall not affect the interpretation of this **Agreement**,
- 3.2.8. The **Parties** acknowledge that each of them has had the opportunity to take legal advice concerning this **Agreement**, and agree that no provision or word used in this **Agreement** shall be interpreted to the disadvantage of either **Party** because that **Party** was responsible for or participated in the preparation or drafting of this **Agreement** or any part of it.
- 3.2.9. Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.10. The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day,
- 3.2.11. If any definition in clause 3.1 (*Definitions*) contains a substantive provision conferring rights or imposing obligations on any **Party**, effect shall be given to such provision as if it was a substantive provision in the body of this **Agreement**.
- 3.2.12. Where there is a conflict between the provisions in the **Agreement** and its **Addendums** or **Annexures**, the provisions in the **Agreement** will prevail, unless the context provides otherwise.

4. APPOINTMENT

- 3.3. **Lesedi** appointed the **Service Provider** to implement and manage the **Project** in accordance with the terms and conditions of this **Agreement** for the duration of the **Agreement** and the **Service Provider** accordingly accepts the appointment.
- 3.4. The appointment letter is attached as **Annexure A**.

5. CO-OPERATION

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

6. OBLIGATIONS OF SERVICE PROVIDER

- 6.1. The **Service Provider** shall execute the obligations in line with the Bill of Quantities and Financial Proposal attached hereto as **Annexures B and C**.
- 6.2. When necessary, the **Service Provider** shall enter into relevant **Addendums**, which shall include the relevant General Conditions of Contract applicable to this **Agreement** in order to regulate the implementation of the **Project**.
- 6.3. The **Service Provider** shall devote the necessary time and attention to their obligations and not engage in any business or activity that will prevent the **Service Provider** from performing its obligations effectively.
- 6.4. The **Service Provider** shall not be relieved of any obligation, responsibility or liability under this **Agreement** by the appointment of any sub-contractor to carry out any part of its obligations. As between the **Service Provider** and **Lesedi**, the **Service Provider** shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all sub-contractors. All references



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in this Agreement to any performance, payment, act, default, omission, breach or negligence of the Service Provider shall be deemed to include any of the same by a sub-contractor.

- 6.5. Lesedi shall at all reasonable times and with prior written notice have access to the Project, all records and documentation (including the right to reproduce) required of the **Service Provider** to be kept in relation to the Project for purposes of auditing, quality control and monitoring of the **Project** by **Lesedi**.
- 6.6. The Service Provider shall:
- 6.6.1. carry out its obligations (each as a separate and distinct obligation) in accordance with Good Industry Practice;
- 6.6.2. in a manner which gives priority to health and safety in the performance of the obligations in order to protect life, health, property and the environment;
- 6.6.3. in compliance with the reasonable policies, procedures, protocols and directives of Lesedi (as may be amended from time to time) as indicated;
- 6.6.4. employ persons in connection with the performance of the obligations who have the necessary skills and experience as required by their respective professions, trades and callings and taking into account their roles and responsibilities in relation to the **Project**.

7. GENERAL RIGHTS AND OBLIGATIONS OF LESEDI

Lesedi —

- 7.1. shall assist the Service Provider with adequate access to information and documentation available to the Municipality that will be required by the Service Provider to implement the Project;
- 7.2. shall make payments in terms of clause 12 (*Payment*);
- 7.3. shall inform the Service Provider of its policies, procedures, protocols and directives as may be applicable to the Project and shall timeously inform the Service Provider of any amendments thereto.

8. WARRANTIES

8.1. Service Provider Warranties

The Service Provider warrants that -

- 8.1.1. the obligations of the **Service Provider** under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of **the Agreement**;
- 8.1.2. it has satisfied itself as to the nature and extent of the obligations to be provided in terms of the Agreement; and
- 8.1.3. it has the necessary resources, skills, expertise and experience required to carry out the obligations in terms of this Agreement and will use reasonable care and skill in the execution of the same under this Agreement.



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9. CONFIDENTIALITY

- 9.1.** The **Service Provider** shall not, during the term of this **Agreement** and thereafter, without the prior written consent of Lesedi, disclose any confidential information relating to Lesedi and the Project to anyone other than those persons who are connected to Lesedi and/or the **Service Provider** and who are required or authorised to have access to such information.
- 9.2.** The obligation to maintain the confidentiality of information shall survive the termination of this **Agreement**, but will not apply to confidential information which was in the public domain prior to being disclosed by the **Service Provider** and has come into the public domain other than as a result of being divulged by the **Service Provider** or is required to be disclosed by legislation or a court of law.

10. OWNERSHIP OF INTELLECTUAL PROPERTY

- 10.1.** Information provided by **Lesedi** to the **Service Provider** and any studies, reports and documentation produced by the **Service Provider** in the performance, shall belong to and remain the property of **Lesedi**, and will not be used by the **Service Provider** for any purpose other than in accordance with this Agreement, unless by written permission of **Lesedi**.
- 10.2.** Upon termination of this **Agreement** for any reason whatsoever, the **Service Provider** must return without delay to **Lesedi** all materials, information or documentation in its possession, which belong to **Lesedi**, regardless of whether or not such materials, information or documentation were originally supplied by **Lesedi** to the **Service Provider**.

11. FINANCIAL CONTROL

This **Agreement** is subject to the provisions of the Local Government: Municipal Finance Management Act.



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12. PAYMENT

- 12.1.** Lesedi shall make payment to the **Service Provider for the executed Project as per the approved Annual Audit Plan (AAP).**
- 12.2.** The money payable by **Lesedi** during the term of this **Agreement** shall be based on hourly rate as per the proposal within the tender documents, refer below for the specified hourly rates. Fees for a specific approved audit project shall be based on the approved hours as per the Annual Audit Plan as approved by the Audit Committee during the 3 year contract. Any fees payable above the approved fees as per the Annual Audit Plan shall be approved by the Audit Committee on presentation of information to support the fees overrun.

<u>Audit Reviews (Risk & Regulatory Audit)</u>	<u>Professional Rate VAT exclusive ®</u>	<u>VAT at 15%</u>	<u>Total Professional rate VAT Inclusive</u>
Director/ Engagement Partner	1,279	192	1,471
Audit Manager	1,040	156	1,196
Assistant manager	848	127	975
Senior Internal Auditor	586	88	674
Junior Internal Auditor	304	46	350
TOTAL 1			4,666
<u>ICT Reviews</u>	<u>Professional Rate VAT exclusive ®</u>	<u>VAT at 15%</u>	<u>Total Professional rate VAT Inclusive</u>
Director/ Engagement Partner	1,279	192	1,471
Audit Manager	1,040	156	1,196
Assistant manager	848	127	975
Internal Auditor	586	88	674
Junior Internal Auditor	304	46	350
TOTAL 2			4,666
GRAND TOTAL (1+2)			9,331

Travel, accommodation and other expenses related to the project will be claimed on actual expenditure but based on LESEDI LOCAL MUNICIPALITY's travel and subsistence allowances.



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12.3. Payment Invoices

12.3.1. The **Service Provider** shall submit to **Lesedi** payment invoices in line applicable standards and practices of auditing this **Agreement**.

12.3.2. **Lesedi** shall pay the amount of the payment invoice after it has been certified by the authorized person of **Lesedi**.

13. TERMINATION

13.1. Non-default termination

13.1.1. This **Agreement** shall automatically be terminated on the 08 January 2022 (expiry date), unless it has been terminated earlier or extended in accordance with the provisions of this **Agreement**.

13.2. Breach

13.2.1. A Party commits breach if he fails or refuses to perform as agreed in terms of the provisions of the **Agreement**.

13.2.2. Should any Party (the "guilty Party") commit a breach of this **Agreement** and fail or refuse to rectify that breach within 14 (FOURTEEN) days after receipt of a written notice from the other Party (the "innocent Party"), calling upon the guilty Party to rectify that breach, the innocent Party shall be entitled, without prejudice to any other of his rights, to forthwith cancel this **Agreement** by written notice to the guilty Party.

13.2.3. The Parties recognize that this provision may be amended in the Addendum(s) contemplated in this **Agreement**.

13.3. Exhaustion of Funds

It is also agreed that should funds no longer be available to pay for the execution of the **Project**, **Lesedi** may terminate this **Agreement** in its own discretion or temporarily suspend all or part of the **Project** by notice to the **Service Provider** who shall immediately make arrangements to stop the performance of the **Project** and minimize further expenditure: Provided that the **Service Provider** shall thereupon be entitled to payment in full for the services delivered, up to the date of termination or suspension.

14. DISPUTE RESOLUTION

14.1. The dispute resolution procedure contained in this clause shall apply to any dispute, claim or difference between the **Parties** arising out of or relating to this **Agreement** ("a dispute").

14.2. A dispute will not be deemed to be a dispute until one of the **Parties** has provided a written notice conveying the nature and scope of the dispute to the other **Party**.

14.3. **Parties** will endeavour to solve all disputes amicably first.

14.4. If the **Parties** have been unable to resolve any dispute within 10 (TEN) working days of the date of the notice contemplated in clause 15.2, any **Party** may approach the South Gauteng High Court to settle the dispute.



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- 14.5. Nothing in this clause prevent any **Party** to approach the South Gauteng High Court having to obtain urgent relief which may be required by such **Party**.
- 14.6. The **Parties** recognize that this provision may be amended in the **Addendum(s)** contemplated in this **Agreement**.

15. INDEMNITIES

The **Service Provider** indemnifies and shall keep **Lesedi** indemnified at all times against all losses sustained by **Lesedi** in consequence of -

- 15.1. any —
- 15.1.1. loss of or damage to property;
- 15.1.2. breach of a statutory duty arising under any applicable Law;
- 15.1.3. claim for or in respect of the death or personal injury of any individual during the duration of the **Project**;
or
- 15.1.4. other claim, action, charge, cost, demand or expense, (including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance of any of the obligations, save to the extent caused by the gross negligence or wilful misconduct of **Lesedi** or by a breach by **Lesedi** of an express provision of this **Agreement** that is directly linked to the loss; or
- 15.2. any breach by the **Service Provider** of any warranties given by it in this **Agreement**.

16. CONTRACT MANAGEMENT

Both **Parties** shall nominate and appoint Contract Managers from time to time by written notification of their appointment to the other **Party** to facilitate the implementation of the **Agreement**.


17. MISCELLANEOUS

- 17.1. Save as expressly permitted hereunder, a **Party** shall not, without the prior written approval of the other **Party**, which shall not be unreasonably withheld, assign, cede, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.
- 17.2. The **Service Provider** shall not subcontract with any person for the carrying out of any of its obligations under this **Agreement**, without, in each case, the prior written consent of **Lesedi**, which consent shall not be unreasonably withheld or delayed.
- 17.3. This **Agreement** shall be governed by and construed in accordance with the laws of the Republic of South Africa. Each **Party** agrees that the Gauteng High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this **Agreement**, and irrevocably submits to the jurisdiction of the Gauteng High Court, Johannesburg.



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- 17.4.** No provision of this **Agreement** including, without limitation, the provisions of this clause may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this **Agreement**, except (in any such case) by an Agreement in writing signed by the duly authorised representatives of the **Parties**.
- 17.5.** Any relaxation, indulgence or delay (together "Indulgence") by either **Party** in exercising, or any failure by either **Party** to exercise, any right under this **Agreement** shall not be construed as a waiver of that right and shall not affect the ability of that **Party** subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that **Party** or any other person).
- 17.6.** Except where expressly provided to the contrary in this **Agreement**, this **Agreement** constitutes the entire **Agreement** between the **Parties** in connection with its subject matter and supersedes all prior representations, communications, negotiations, understandings and Agreements concerning the subject matter of this **Agreement**.
- 17.7.** This **Agreement** may be executed in any number of identical counterparts, all of which when taken together shall constitute one **Agreement**. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the **Parties** shall constitute a full original of this **Agreement** for all purposes.
- 17.8.** All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either **Party** in terms of this **Agreement** or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile or electronic mail to the recipient **Party** at its relevant address set out below:
- 17.8.1. Lesedi, at:**
Address: Municipal Manager
Lesedi Local Municipality
1 H.F Verwoed Street
Heidelberg,
1441
- 17.8.2. The Service Provider, at:**
Address: MNB Chartered Accountants
38 Boerneef Street
Vorna Valley
Midrand
1686
- 17.9.** Either **Party** may, by written notice to the other **Party**, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.
- 17.10.** Any notice or other communication given by any **Party** to the other **Party** which :-
- 17.10.1.** is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or
- 17.10.2.** delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addresses at the time of delivery; or 

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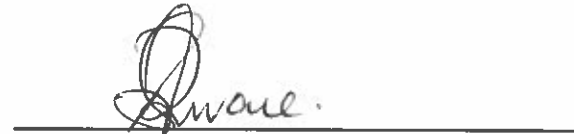
- 17.10.3. is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.
- 17.11. **he Parties** choose their respective physical addresses in clause 18.8 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings and notices envisaged in this **Agreement**, to which they are a **Party** may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant **Party** until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.
- 17.12. Each **Party** shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this **Agreement**.

Thus done and signed at Heidelberg on this 10 day of January 2019.



ACTING MUNICIPAL MANAGER

Name: Adv. Gugulethu Thimane



WITNESS

Name in print: SIPHISO ZWANE

Thus done and signed at Heidelberg on this 10 day of January 2019.



THE SERVICE PROVIDER
(MNB Chartered Accountants Inc.)

Name: Wisani Shirinda



WITNESS

Name in print: Glen Rivalani Ntuli