



SERVICE LEVEL AGREEMENT

(Drafting of the Top Layer Service Delivery Budget Implementation KPI System Descriptions)

Q20/2018

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SERVICE LEVEL AGREEMENT

1 PARTIES

1.1 The parties to this agreement are:

1.1.1 **PIXLEY KA SEME DISTRICT MUNICIPALITY**, a District Municipality established in terms of the Municipal Structures Act 117 Of 1998, with its main place of business at Culvert Road, De Aar, 7000, herein represented and duly authorised thereto by **Rodney E Pieterse**, in his capacity as Municipal Manager.

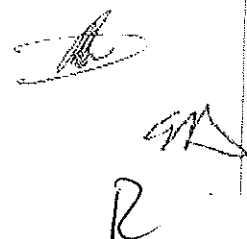
("the Customer")

and

1.1.2 **IGNITE ADVISORY SERVICES (Pty) Ltd**, Registration Number: 2006/035577/07, a Private Company, duly incorporated in terms of the Laws of the Republic of South Africa v/a **IGNITE ADVISORY SERVICES (Pty)Ltd**, with its registered place of business at: 21 c Durbanville Avenue, Rosedale, Bellville, Cape Town, herein represented and duly authorised thereto by, **Arthur Butler**, in his capacity as Director of Ignite Advisory Services (Pty) Ltd.

("the Service Provider").

Herein after referred to as the parties:



Handwritten signatures and initials, including a signature that appears to be 'R' and another that appears to be 'SM'.

1.1 The parties agree as set out below.

2 INTERPRETATION

2.1 In this agreement, unless inconsistent with or otherwise indicated by the context --

2.1.2 "**the/this agreement**" means the agreement contained in this document and the Schedule;

2.1.3 "**business day**" means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;

2.1.4 "**deliverable items**" means the Drafting of Top Layer System Descriptions and Disbursements;


2.1.5 "**effective date**" means the date of signature of the party signing last in time;

2.1.6 "**including**" (or words of similar meaning) means to include without limitation, and if the expression is used with reference to specific examples the "*eiusdem generis*" rule shall not apply;

2.1.7 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

2.1.8 "**payable deliverable**" means the Top Layer System Descriptions and Disbursements, the deliverable items, which once delivered by the Service Provider to the Customer, shall be payable to the Service Provider by the Customer as set out in this agreement;


2.1.9 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;


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- 2.1.10 "**project**" means the Drafting of the Top Layer System Descriptions and Disbursements as set out in Q 20/2018;
- 2.1.11 "**Schedule**" means the Schedule attached hereto which is an integral part of this agreement;
- 2.1.12 "**services**" means the services to be rendered by the Service Provider, including the delivery of the deliverable items, as set out in this agreement;
- 2.1.13 "**signature date**" means (or words of similar meaning) in relation to this agreement or any other document means the date on which this agreement or other document (as the case may be) is signed by the party signing it last in time;
- 2.1.14 "**termination date**" means the date on which all the deliverable items constituting the services are delivered in full by the Service Provider to the Customer, which date shall not be more than five working days after the signing of this agreement, alternatively the date designated as such by the Customer in accordance with clause 16;
- 2.1.15 "**termination/expiration assistance**" means the provision by the Service Provider of all reasonable information and assistance to the Customer to enable the Customer or a third party designated by the Customer to take over Service Provider's obligations in the event of termination or expiration of this agreement.
- 2.1.16 "**time frames**" means the periods during which the Service Provider shall render the services and/or deliver the deliverable items, as set out in clause 2.1.15 above;
- 2.1.17 "**writing**" (or words of similar meaning) means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002.

2.2 Any reference to –

2.2.2 the singular includes the plural and vice versa;


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- 2.2.3 natural persons include juristic persons and vice versa;
- 2.2.4 any one sex or gender includes the other sexes or genders, as the case may be;
- 2.2.5 any statute, constitution, decree, treaty, regulation directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at the date of signature of this agreement and as amended or re-enacted from time to time;
- 2.2.6 a party includes a reference to that party's successors in title and assigns allowed at law.
- 2.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.4 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.6 If any period is referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1st (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.
- 2.7 If the due date for performance of any obligation in terms of this agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.



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- 2.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 on that day.
- 2.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 2.10 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words then the words shall apply.
- 2.11 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.

3 APPOINTMENT OF SERVICE PROVIDER

- 3.1 The Customer hereby appoints the Service Provider, who hereby accepts this appointment;
- 3.2 The Service Provider hereby acknowledge and agrees that -
- 3.2.2 the deliverable items will be developed in accordance with the time frames set out in this agreement and shall be delivered strictly in accordance with this agreement;
- 3.2.3 the punctual performance of the services is a material term of this agreement and as such the Service Provider shall render the services strictly in accordance with this agreement;
- 3.2.4 should the Service Provider fail to render the services in terms of this agreement, the Customer may suffer damages, including consequential damages, and shall hold the Service Provider to account there for.

4 DURATION

This agreement shall commence, despite the date of signature, on the on the 6th day of February 2019 and terminate on the termination date, unless terminated earlier by either party in terms of this agreement.

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5 DELIVERABLE ITEMS

- 5.1 In rendering the services, the Service Provider shall draft the Top Layer Service Delivery Budget Implementation KPI Descriptions and Disbursements.
- 5.2 The Service Provider shall deliver the deliverable items in the form and with substance set out the bid document which form an integral part of this agreement.

6 WARRANTY OF QUALITY CONTROL

- 6.1 The Service Provider hereby warrants to the Customer, which warranties the Customer hereby accepts and records are material representations which induced the Customer to enter into this agreement, that the Service Provider shall –
 - 6.1.2 exercise reasonable skill, care and diligence in rendering the services and in the performance of all its obligations in terms of this agreement.
 - 6.1.3 at all times display such proficient level of skill, care and diligence in providing the services, as is reasonably expected of a qualified, experienced and skilled Service Provider in its field of practice.
- 6.2 The Service Provider undertakes and agrees to timorously submit draft deliverable items to the Customer for review and approval, prior to finalizing such delivery items if required by the Customer to do so. The Customer may in its reasonable discretion reject a draft deliverable item. In such instance the Customer shall notify the Service Provider of its reasons therefore and shall specify in writing the rejected aspects of the draft deliverable item which the Customer requires to be amended. Upon receipt of such notification, the Service Provider shall, taking into account the time frames, perform such amendment/s and re-submit the draft deliverable item to the Customer for approval.


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7 CONTACT PERSONNEL

Each party shall appoint and notify the other party in writing of a designated employee who shall be authorised to act as the primary contact person for each party in dealing with the other party in respect of each party's obligations in terms of this agreement and who will issue all consents or approvals and make all requests on behalf of each party.

8 RELATIONSHIP BETWEEN THE PARTIES

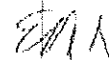
- 8.1 The parties shall for the duration of this agreement be independent contractors to each other. No provision contained herein shall be construed to confer to the Service Provider the status of being an agent, employee, partner or co-venturer of the Customer. No person associated with the Service Provider in the performance of the provisions of the Service Provider's obligations in terms of this agreement shall be deemed to be an employee, agent or contractor of the Customer.
- 8.2 Neither the Service Provider, nor any of its officers, directors, employees or sub-contractors shall have the authority to represent, bind or act on behalf of the Customer in its performance of the Service Provider's obligations in terms of this agreement without the prior written consent of the Customer.

9 PRICE

- 9.1 The total contract price is R 53 620.00 (Fifty Three Thousand Six Hundred and Thirteen Rand), inclusive of VAT.



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10 PAYMENT

- 10.1 As consideration for the services, the Customer shall pay to the Service Provider the fees set out in clause 9.1 in consideration for the services.
- 10.2 The Customer shall make payment of the fees in accordance with its Supply Chain Policy. It is specifically recorded that the Service Provider shall only be entitled to receive payment upon delivery of a payable deliverable once the specified service has been delivered and the Original Invoice have been received by the Customer.
- 10.3 Upon delivery of a payable deliverable, the Service Provider shall render an invoice for all fees payable by the Customer in respect of such payable deliverable, which invoice shall, where applicable, be inclusive of any disbursements.
- 10.4 Payment shall be made to the Service Provider's bank account specified on the invoice, within (30 days) days after the receipt of the invoice by the Customer.

11 INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT

- 11.1 The intellectual property rights for all deliverable items developed and supplied in terms of this agreement shall vest with the Customer.
- 11.2 The Service Provider shall upon termination of this agreement, deliver all items constituting the subject matter of the intellectual property rights, together a detailed inventory in respect thereof, to the Customer.
- 11.3 Unless agreed otherwise in writing, nothing in this agreement shall confer or be deemed to confer on the Service Provider any rights in or licence to use the Customer's intellectual property right other than in the performance of its obligations in terms of this agreement.
- 11.4 Either party ("the infringing party") shall ensure that the use by the other party ("the non-infringing party") of the information including the deliverable items shall not infringe any third party's intellectual property rights.

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11.5 If it is established that such use infringes any third party's intellectual property right, the infringing party -

11.5.2 shall at its own expense and risk take such measures as to ensure that the infringement is obviated and that the non-infringing party's use of the information is not affected,

11.5.3 hereby indemnifies the non-infringing party against any claims brought by such third parties, provided that the non-infringing party notifies the infringing party in writing of such claims forthwith and permits the infringing party to defend any such claim.

12 NON-SOLICITATION


Neither party shall directly or indirectly solicit for employment, and/or entice away or endeavour to, any of the employees of the other party during the subsistence of this agreement and for a period of 1 (one) year thereafter.

13 GOOD FAITH

In implementing this agreement and in all further dealings with each other, the parties each undertake to observe good faith in giving effect to the spirit and purpose of this agreement.

14 ANTI-CORRUPTION

14.1 The Service Provider hereby undertakes that it shall not make, nor cause to be made, any offer, gift, payment, consideration or benefit of any kind whatsoever, which could be construed as an illegal or corrupt practice, either directly or indirectly to any director, official, employee or representative of the Customer or any other person, as an inducement or reward in relation to the entering into or execution of this agreement.

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14.2 Any such practice shall constitute a ground for termination of this agreement by the Customer.

15 BREACH

In the event of either of the parties ("the defaulting party") committing a breach of any of the terms of this agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from the defaulting party.

16 TERMINATION FOR CONVENIENCE

The Customer may terminate this agreement for convenience and without cause at any time by giving the other party at least 30 (thirty) days' prior notice, designating the termination date.

17 TERMINATION / EXPIRATION ASSISTANCE

17.1 On the expiration or termination of this agreement the Service Provider shall, at the request of the Customer, make itself available to provide termination/expiration assistance.

17.2 If this agreement is terminated other than pursuant to clause 16, the first 30 (thirty) days of termination/expiration assistance will be provided at no additional cost to the Customer. If this agreement is terminated by the Customer in terms of clause 16 and the Customer elects to have the Service Provider provide termination/expiration assistance, the Service Provider shall be entitled to charge for such assistance.



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18 NOTICES AND DOMICILIA

- 18.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in Clause 1 for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 18.2 For purposes of this agreement the parties' respective addresses shall be as set out in the Schedule or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned shall be changed to a post office box or *poste restante*.
- 18.3 Any notice given in terms of this agreement shall be in writing and shall -
- 18.3.2 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 18.3.3 if transmitted by fax be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.
- 18.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of fax transmission shall be adequate written notice or communication to such party.

19 DISPUTE RESOLUTION AND JURISDICTION

- 19.1 Any disputes arising from or in connection with this agreement shall, at the sole, unfettered discretion of the Customer, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by a single arbitrator appointed by the Foundation.


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19.2 The provisions of clause 19.1 shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

19.3 The parties consent to the jurisdiction the Magistrate's Court, in respect of any claim instituted and which may result from this Agreement notwithstanding the fact that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

19.4 In the event of the Customer incurring any legal costs or taking any legal steps for the collection of monies payable in terms of this agreement or the fulfilment of any provision of this agreement, the Service Provider will be liable to the Customer for the payment of all such legal costs, as well as legal costs on the scale as between attorney and own client together with collection commission if the Customer's legal steps are successful viz a vis the Service Provider.

20 NEW LAWS AND INABILITY TO PERFORM

20.1 If any law comes into operation subsequent to the signature of this agreement which law affects any aspect or matter or issue contained in this agreement, the parties undertake to enter into negotiations in good faith regarding a variation of this agreement in order to ensure that neither this agreement nor its implementation constitutes a contravention of such law.

20.2 If either party is prevented from performing any of its obligations in terms of this agreement as a result of any existing or new law or as a result of any event beyond its reasonable control whether or not foreseeable, including general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot or insurrection, it shall not be liable for any failure to perform its obligations under this agreement while such event persists and shall have the right (unless such event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this agreement at any time after the intervention of or becoming aware of such event.



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20.3 If this agreement is terminated by either party in accordance with the provisions of this clause neither party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

21 SEVERABILITY


Each and every provision of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this agreement. If any of the provisions of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this agreement shall be and remain of full force and effect.

22 OPERATION

The expiration, cancellation or other termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

23 ASSIGNMENT

The Service Provider may not assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining the Customer's prior written consent thereto.

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24 SKILLS TRANSFER

The service provider undertakes to involve the employees of the customer to such an extent that the customer's employees gain experience in the development and implementation of the IDP.

25 GENERAL

- 25.1 This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.
- 25.2 No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.
- 25.3 No latitude, extension of time or other indulgence which may be given or allowed by the Customer to the Service Provider in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of the Customer arising from this agreement, and no single or partial exercise of any right by the Customer under this agreement, shall in any circumstances be construed to be an implied consent or election by the Customer or operate as a waiver or a Novation of or otherwise affect any of the Customer's rights in terms of or arising from this agreement or Estop or preclude the Customer from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 25.4 This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

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25.5 This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

25.6 The persons signing this agreement in a representative capacity warrant their authority to do so.

This done and signed at _____ on this _____ day of _____ 2019.

RE PIETERSE
("the Customer")

Witnesses

1. _____

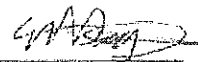
2. _____

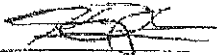
This done and signed at ~~Cape Town~~ on this ~~22nd~~ day of ~~March~~ ²⁰¹⁹ ~~2017~~.

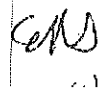


ARTHUR BUTLER
("the Service Provider")

Witnesses

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2. 





CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution) Ignite Advisory Services in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number SP/2019/2019 at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) ARTHUR BUTLER
 CAPACITY DIRECTOR
 SIGNATURE [Signature]
 NAME OF FIRM IGNITE ADVISORY SERVICES
 DATE 22-03-2019

WITNESSES	
1	<u>[Signature]</u>
2	<u>[Signature]</u>
DATE: <u>22-03-2019</u>	

[Signature]

2019/03/22

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CONTRACT FORM - RENDERING OF SERVICES
PART 2 (TO BE FILLED IN BY THE PURCHASER)

- I....., in my capacity as..... accept your bid under reference numberdated.....for the rendering of services indicated hereunder and/o^r further specified in the annexure(s).
- An official order indicating service delivery instructions is forthcoming.
- I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP



WITNESSES	
1
2
DATE:

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