

DRAFT SERVICE LEVEL AGREEMENT



MADE AND ENTERED INTO BETWEEN
MOSSEL BAY MUNICIPALITY

Herein represented by **Mr. C B Puren** in his capacity as **Acting Municipal Manager**
properly authorised thereto in terms of **Resolution** _____

(hereinafter referred to as the Municipality)

AND

ESRI SOUTH AFRICA (PTY) LTD

Registration number: 1989/006809/07

Herein represented by **Mr. H Nkosi** properly authorised thereto in his capacity as
Director.

(hereinafter referred to as the Service Provider)

PREAMBLE

WHEREAS the Municipality requested tenders in terms of Tender 207/2021/2022 for the supply, delivery and installation of an ARCGIS Enterprise License Agreement including development, support and maintenance for the Mossel Bay Municipality; and

WHEREAS the Municipality has followed the prescribed Section 33 process in terms of the Local Government: Municipal Finance Management Act, No. 56 of 2003; and

WHEREAS the Municipality has by virtue of Council Resolution _____ resolved to enter into an agreement with the service provider from 01 March 2022 to 31 October 2031 for the aforementioned services and;

THEREFORE THE PARTIES AGREE AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

In this agreement, unless the context indicates otherwise-

- 1.1 An expression, which denotes any gender, includes the other genders, a natural person includes a judicial person and vice versa, and the singular includes the plural and vice versa;
- 1.2 Clause headings are for convenience only and shall not be taken into account in the interpretation of this Agreement;
- 1.3 The following expressions shall bear the meanings assigned to them-
“agreement”: this Service Level Agreement (SLA) together with the tender documentation and any other annexures hereto;
“Integrated Development Plan (IDP)” means a plan envisaged in section 25 of the Local Government: Municipal Systems Act.
“Intellectual Property Rights” means all current and future intellectual property rights of whatever nature in relation to or attaching to the Software, including, but not limited to, all vested, contingent and future patents, copyrights, data, designs, source codes, inventions, processes, know-how or techniques incorporated and / or embodied in the Software and / or Hardware, trademarks, service marks and other

rights of a similar character, whether or not the same are registered or capable of registration.

“Maintenance” means any services to keep the system (source code or licensed programs) operational. This includes bug fixes, causes and consequences because of the system functionality and/or service provider services, telephonic support and the running of the helpdesk. This excludes issues caused by actions and procedures by the officials of the customer. It also excludes refinements required by the customer. Any additional hours required by the service provider is therefore for the service providers own account;

“mSCOA Development” means any changes required to the licensed programs of the service provider to comply with the Municipal Regulations on Standard Chart of Accounts as promulgated in terms of Regulation 312 of 22 April 2014 and all instructions, position papers and versions issued by National Treasury. It is agreed that the customer is classified as a B2 Municipality and that all business process whether required by legislation, mSCOA regulations or best practice needs to be complied with or, if the service provider cannot comply, support of integration with any other 3rd party of the choice of the customer to comply with the regulations;

“Non-system users” means any user that is registered on the system for the purposes of individual performance management but does not have access to the system.

“Other assistance” means any assistance other than the support, maintenance or mSCOA development; and

“parties”: Ignite Advisory Services (Pty) Ltd and Mossel Bay Municipality;

“Section 57 Employee” means A person employed by a Municipality as a Municipal Manager or as a manager directly accountable to a Municipal Manager;

“Seamless integration” means integration without any human intervention, can be in batch format within a central file on the

Municipal server or a live minute to minute link between the financial system and as prescribed in this tender document;

"Service Delivery and Budget Implementation Plan (SDBIP)"

means a detailed plan approved by the Mayor of a Municipality in terms of section 53 (1) (c) (ii) of the Municipal Finance Management Act for implementing the Municipality's delivery of municipal services and its annual budget, and which must indicate;

- (a) projections for each month of —
 - (i) revenue to be collected, by source; and 19
 - (ii) operational and capital expenditure, by vote;
- (b) service delivery targets and performance indicators for each quarter; and
- (c) any other matters that may be prescribed, and includes any revisions of such plan by the mayor in terms of section 54(1)(c) of the Municipal Finance Management Act

"Service Provider" means ESRI South Africa (Pty) Ltd, a private company duly registered and incorporated with limited liability in accordance with the company laws and related acts, of the Republic of South Africa, with its registered head office at the International Business Gateway, Corner New Road and 6th Avenue, Midrand, Gauteng, 1682.

"Support" means any request for support from the customer where the root cause for the support is linked to an official of the customer, in other words correcting an error of an official of the customer or an enhancement required by the customer. The prepaid days or hours get consumed only on instruction of the customer. The consumption is linked to actual timesheets of the service provider.

"System users" means any user that will access the system with their own user name and password to complete tasks on the system relating to individual or organisational performance.

- 1.4 The tender documentation, incorporated herein, forms part of the agreement between the parties;
- 1.5 In the event of any inconsistency between the provisions of this Agreement (SLA) and the tender documentation, the provisions of tender documentation shall prevail;
- 1.6 This agreement shall be interpreted in accordance with the laws of the Republic of South Africa.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

2. APPOINTMENT

- 2.1 The Municipality hereby appoints the Service Provider to render services to the Municipality.
- 2.2 The agreement shall commence on 01 March 2022 and shall terminate on 31 October 2031.
- 2.3 This agreement may be terminated by means of at least 18 (eighteen) months prior written notice by any party, subject to the following conditions:
 - 2.3.1 The duration of the 18 (eighteen) months prior written notice-period will only commence on the 1st of January (notwithstanding any written notice prior to the 1st of January) and continue until at least the 30th of June of the consecutive year.
 - 2.3.2 The agreement cannot be terminated within a lesser period of 18 (eighteen) months unless otherwise agreed in writing and signed by both parties.

3. WARRANTY AND ACCEPTANCE BY THE SERVICE PROVIDER

- 3.1 The Service Provider, in accepting this appointment, expressly warrants that it possesses or has ready access to the appropriate skills to execute all its obligations in terms of this agreement and herewith provides an unconditional warranty that it has the authority to provide the service as stipulated in this SLA.

- 3.2 The Service Provider expressly accepts that its services could be terminated on the grounds contained hereinafter and that the Municipality is not obliged to utilise the service of the Service Provider for any minimum period and that, upon termination, it would receive such fees and disbursements as are provided herein.

4. SCOPE OF WORK

- 4.1 Mossel Bay Municipality requires a fully functional ArcGIS Enterprise System to be able to meet its operational and reporting needs. Mossel Bay Municipality requires the service provider to provide licensing, development, support, maintenance and training for the Municipal GIS platform.

- 4.2 The following GIS System Functions are currently in place at the Municipality:

4.2.1 INFRASTRUCTURE ONLINE APPLICATION

- Cloud based Spatial Web Application with pre-approved database schemas from Infrastructure department allowing GIS Data capture in correct format for Asset Department.
- Integrated with AutoCAD from Autodesk.
- Synced to local GIS Enterprise Environment.

4.2.2 REGISTER LAYER

- Spatial Layer showing all registered properties at the deed's office with related ownership information.
- Automatically updated in enterprise database and viewers monthly.

4.2.3 REVENUE ENHANCEMENT APPLICATION AND DASHBOARD

- Pre-determined data exported from the financial system is updated daily into the enterprise database and updated in a spatial application showing 90-day debtors, Indigents, Valuation classes etc.
- Dashboard updating dynamically per location.

4.2.4 INTEGRATION WITH LAND USE MANAGEMENT SYSTEM

- Data is imported and exported to and from the Land use management system in an approved format.

4.2.5 ASSETS MANAGEMENT INTEGRATION

- Data from the Asset Register is exported from the financial system and integrated into the enterprise database and subsequent web application.
- Web Application is configured to meet specific needs of the asset department.
- Data capturing for asset unbundling is made available to external service providers in a pre-approved CIDMS schema.

4.2.6 PUBLIC GIS VIEWER

- Data from the Enterprise Environment is updated daily to the cloud platform to be displayed in a public spatial application that is accessible from the municipal website.

4.2.7 SURVEYED SPATIAL LAYER

- Data from the Surveyor General Diagrams is updated quarterly in the Enterprise Database and subsequent General GIS Viewer.

4.2.8 MONITORING OF FINANCIAL PROPERTIES

- List of properties in the financial system is compared to the properties in the GIS system to ensure synchronization.
- Any anomalies are automatically emailed to the GIS team.

4.2.9 SMART METERS

- Smart Water Meter data is exported daily to a centralised folder.
- Data is imported into the centralized database with multiple queries and procedures.

- ArcGIS Dashboard.
- Automated daily and weekly reports

4.2.10 FINANCIAL SYSTEM SOAP SERVICE INTEGRATION

- Custom Application transferring data from the Financial Soap service to the GIS to be displayed dynamically and live from the financial system.
- Custom HTML page to display data.

4.2.11 LINK WITH DOCUMENT MANAGEMENT SYSTEM

- Web Service link allowing users to dynamically switch between the GIS and the Document Management System.

4.2.12 FLEET MANAGEMENT DATA

- Custom application transferring data from the fleet management service provider into the Enterprise database every 30 seconds to be displayed in the GIS Viewer.

4.2.13 OBLIQUE VIEWER

- ESRI Oblique widget configured to display oblique imagery from 2016 into the General GIS Viewer

4.2.14 WASTE MANAGEMENT

- Waste Management Areas captured into the centralized database and displayed in the General GIS Viewer.

4.2.15 GENERAL

- Integration with the municipal Active Directory.
- Custom Training manuals/videos for Mossel Bay Municipality.

4.3 The current licenses used in the Municipality's ARCGIS Enterprise System are as per Annexure A attached hereto.

5. CONDITIONS

5.1 The ARCGIS system supplied by the Service Provider must have the ability to supply and support a GIS system with all the GIS system Functions listed as per Clause 4.

5.2 The Service Provider and system supplied must have ability to supply any future development as required by Mossel Bay Municipality.

5.3 The specifications for the Capped ELA is as follows:

Item	Product	Number of Licenses
	Enterprise (Perpetual)	
1	ArcGIS Enterprise Standard (<i>Includes: ArcGIS GIS Server Standard (4 Core Default), Portal for ArcGIS, Uncapped Viewer User Type, 5 x Creator User Type, ArcGIS Schematics</i>)	1
2	ArcGIS Enterprise Editor User Type	5
3	ArcGIS Enterprise Field Worker User Type	5
	Enterprise - Capability Servers	
4	ArcGIS Image Server (up to 4 Cores)	1
5	ArcGIS Monitor for ArcGIS Server (up to 4 Cores)	0
Item	Product	Number of Licenses
	Desktop	
6	ArcGIS Desktop Standard Concurrent Use - Primary License	1
7	ArcGIS Desktop Standard Concurrent Use - Secondary License	2
8	ArcGIS Desktop Basic Concurrent Use - Primary License	1
9	ArcGIS Desktop Basic Concurrent Use - Secondary License	9
	Desktop - Extensions	
10	ArcGIS 3D Analyst Concurrent Use - Primary	1
11	ArcGIS Spatial Analyst Concurrent Use - Primary	1

12	ArcGIS Workflow Manager Concurrent Use - Primary	1
13	ArcGIS Network Analyst Concurrent Use - Primary	1
14	ArcGIS Data Interoperability Concurrent Use - Primary	1
	Cloud (ArcGIS Online)	
15	ArcGIS Online Viewer User Type - Term License	5
16	ArcGIS Online Editor User Type - Term License (250 credits per user)	5
17	ArcGIS Online Field Worker User Type - Term License (250 credits per user)	5
18	ArcGIS Online Creator User Type - Term License (500 credits per user)	4
19	ArcGIS Online Service Credits (1,000 Credits per bundle)	20 bundles
20	ArcGIS for Developers - Enterprise Subscription	1

5.4 If the System/Software is subject to exchange rate fluctuations the exchange rate will therefore need to be updated annually a month prior 30 June every year or updated annually in May of each year.

5.5 As with any software, GIS software is constantly being updated to keep in line with the latest trends and technology. As the agreement is for a 10-year period updates to the existing deployed licenses, as well as to decommission, migrate retired products, and incorporate new products released must be done as and when needed.

5.6 Should the Software License Quantities need to be adjusted, the Service Provider must then provide the Municipality with a quotation for the following year based on the obtained licensing fees to be updated annually a month prior the anniversary of this agreement.

- Assess the current deployed and available licenses included in the Capped ELA.
- Determine which deployed licenses have been or in line for retirement if any.

- Determine which deployed licenses have been replaced with new products if any.
- Determine which new products are required by Mossel Bay.
- Should new products be released during the term that are not included in the approved Capped ELA, these products can be procured from the vendor at the approved list price at the time of request.

6. **NATURE OF RELATIONSHIP**

The parties agree and acknowledge that at all times –

- 6.1 The Service Provider shall be responsible for its obligations specified in this agreement;
- 6.2 the Municipality shall be responsible for its obligations specified in this agreement; and
- 6.3 the provisions of the Basic Conditions of Employment Act, No 3 of 1983 (as amended) and the Labour Relations Act, including other statutes, regulations, agreements or policies that regulate the employer/employee relationship, or any substituted legislation replacing them shall not apply to the relationship between the parties; and
- 6.4 the scope of the services shall be limited to the agreed scope specified in Clause 4 and Annexure A, subject to any limitations or exclusions provided for in this agreement or agreed otherwise in writing between the parties from time to time.
- 6.5 the parties agree and undertake to not under any circumstances approach, solicit or make any kind of alternative work offers to each other's staff members or other directly or indirectly employed human resources for the duration of this agreement and for a period of 36 (thirty-six) months after this agreement has been terminated.

7. **SERVICE MANAGEMENT**

- 7.1 For the purpose of liaising from time to time with the Municipality regarding the services, the Service Provider shall appoint an authorised designated

representative and supply the Municipality with the relevant contact details of such representative within 7 (seven) days of the commencement date of this agreement.

- 7.2 Any complaints, queries, requests, notices or like information relating to the services which may in any way be reasonably regarded as material to the Service Provider's responsibilities under this agreement shall be communicated in writing forthwith to the designated representative by the Municipality and the Service Provider undertakes to take such action as may be appropriate in a timely manner upon receiving such notice.
- 7.3 This agreement shall not prevent the Service Provider from performing such similar services for any other customers.

8. **OBLIGATIONS OF THE MUNICIPALITY**

8.1 The Municipality shall, unless otherwise agreed in writing –

- 8.1.1 assign a duly authorised representative that shall be responsible for communicating and managing both the content and output of services and monitoring the services to be performed by the Service Provider;
- 8.1.2 provide the Service Provider with full access to the Municipality's premises to enable the Service Provider to render the services;
- 8.1.3 not unreasonably interfere with the activities of the Service Provider or its members of staff;
- 8.1.4 in the event of any default or unacceptable performances and acts on the part of the Service Provider to the Municipality's knowledge, bring to the attention of the Service Providers management such knowledge of default or unacceptable performances and acts in a timely manner to enable the Service Provider to take appropriate corrective action as required in terms of this agreement;

9. **OBLIGATIONS OF THE SERVICE PROVIDER**

9.1 For the duration of this agreement, the Service Provider undertakes for the purpose of rendering the services to –

9.1.1 comply with safety, health and security requirements of the Municipality;

9.1.2 perform the services, as stated in this service level agreement, comprehensively, competently, diligently, to the best of its ability and to the standards set by the Service Provider and required by the Municipality;

9.1.3 remain abreast of all developments in the field in respect of which services are being provided to the Municipality;

9.1.4 be qualified and capable to provide the services in a professional manner and have the necessary skills, know-how and competence to perform the services;

9.1.5 refrain from any action that may be prejudicial or be adverse to the Municipality's standing, reputation or goodwill. The Service Provider shall act in the utmost good faith towards the Municipality including the business or other partners of the Municipality;

9.1.6 keep confidential all information it may acquire during the course of execution of this agreement in strict accordance to the provisions of this agreement;

9.1.7 comply with all ICT security and other policies of the Municipality which may be applicable to this agreement and usage of the municipal system.

10. **COOPERATION WITH MUNICIPALITY AND THIRD PARTIES**

10.1 If the Municipality performs or hires one or more Third Parties to perform some or all of the Services or any related Services, the Service Provider shall use Commercially Reasonable Efforts to cooperate and consult with such Third Parties so that the Service Provider and the Third Parties provide service to the Municipality in as seamless a manner as is reasonably possible. Such cooperation shall include providing such information regarding the

Services as the Municipality and such Third Parties may reasonably request, including providing information of a technical nature.

- 10.2 Where Third Parties require access to the Service Provider Intellectual Property to provide the Services, the Municipality shall request that such Third Parties retained by the Municipality comply with the Service Provider's reasonable confidentiality requirements.
- 10.3 The Service Provider shall immediately notify the Municipality if an act or omission of the Municipality or a Third Party may interfere with the Service Provider's provision of the Services in a timely fashion and shall work with the Municipality to prevent or circumvent such problem or delay.

11. **CHANGES AND/OR ADDITIONS TO SERVICES**

- 11.1 If the Municipality requires changes to be made to the services of any nature which are beyond the scope of the services agreed between the parties in terms of this agreement, the Municipality shall first consult with the Service Provider to discuss the nature and scope of the requested change where after the Municipality shall formalise its request in writing to the Service Provider setting out as much detail as possible and available at the time of making the proposal(s);
- 11.2 Forthwith upon receiving the written request, the Service Provider shall acknowledge receipt of the request in writing and either immediately or not more than 30 (thirty) days thereafter confirm receipt and change implementation criteria in writing if to the extent in which the requested changes can be implemented, accommodated or effected either by the Service Provider or its appointed agent, if at all – including any and all details concerning its (the Service Provider's) requirements, limitations, exclusions and estimated time for completion; together with the additional fees and costs required to be paid to effect the changes,
- 11.3 The Service Providers notice being deemed to constitute an offer ("the offer").

- 11.4 If the Municipality accepts the offer, the Municipality shall sign in acceptance thereof where after the signed offer shall be deemed to constitute a valid addendum to this agreement and be deemed to form a part hereof as if specifically incorporated herein.
- 11.5 The entering into of an Addendum is subject to the necessary legislative requirements in terms of the Municipal Finance Management Act, if applicable.

12. FEES AND DISBURSEMENTS

- 12.1 The Service Provider confirms that it has included, all components and software/hardware not specifically mentioned, but needed to complete a functional system in its pricing.
- 12.2 The approved cost for services rendered in terms of this agreement is as per Annexure B attached hereto.
- 12.3 The Municipality shall remunerate the service provider within 30 days of receipt of a valid tax invoice.
- 12.4 All rates and fees are inclusive of VAT and all other costs.
- 12.5 The Municipality reserves the right to negotiate the prices from Year 2 as per SITA's transversal contract.
- 12.6 If an invoice is identified as incorrect, then the Service Provider shall either issue a corrected invoice if the amount has not yet been paid, or make a correction on the invoice for the month following the month in which the incorrect invoice was issued, if the amount has been paid.
- 12.7 The Municipality may withhold payment of charges, excluding payment of license fees, if any as per Annexure B. Should the Municipality dispute payment of charges in good faith or, if the disputed charges have already been paid, the Municipality may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount

paid. Without limiting the generality of the foregoing, if the service provider fails to complete the work required to achieve a payment milestone successfully or deliver a deliverable ready for acceptance in a timely fashion, the Municipality may withhold the payment in respect of the applicable statement of work until the payment milestone has been achieved and such deliverable accepted.

If the Municipality withholds payment of any charges:

- the Municipality shall notify the service provider within 10 business days of invoice date of the charges that it is disputing; and
- the parties shall promptly address such dispute in accordance with the Dispute Resolution Procedure.

If the dispute relates to (or equals, in the case of disputed charges that have already been paid) only certain of the charges included on an invoice, then the Municipality shall pay the undisputed amounts.

13. ASSIGNMENT

Neither party may assign any right or obligations under this agreement without the express prior written consent of the other party.

14. CESSION

The Service Provider shall not be entitled to cede, transfer or make over any rights and/or duties in terms of this agreement to any third party without the prior written consent of the Municipality and which consent shall not be unreasonably withheld.

15. INDEMNITY

15.1. Without detracting from, and in addition to, any of the other indemnities in this Agreement, the Service Provider shall be solely liable for and hereby indemnifies and holds harmless the Municipality against all claims, charges, damages, costs, actions, liability, demands and/or legal proceedings and expenses in connection with:

15.1.1 personal injury to any individual or;

- 15.1.2 damage to property; or
- 15.1.3 any claims or legal proceedings instituted by any third party against the Service Provider; or
- 15.1.4 arising from, out of, or in connection with the provision by the Service Provider of the service in terms of this Agreement, save to the extent caused by the gross negligence or willful misconduct of the Municipality.

16. CONFIDENTIALITY

16.1 Each party hereby undertakes for the continuance of this agreement and after termination to the other to –

16.1.1 keep confidential all information (written, including information contained in electronic format, or oral) concerning the business and affairs of the other that it shall have obtained or received from the other party ("the information");

16.1.2 not without the other's written consent to disclose the information in whole or in part to any other person save those of its employees involved in the implementation, of this agreement and who have a need to know the same; and

16.1.3 use this information solely in connection with the implementation of this agreement and not for its own or the benefit of any third party.

16.2 The provisions of 16.1 shall not apply to the whole or any part of the information to the extent that it is –

16.2.1 already known to the recipient without obligation of confidence; or

16.2.2 independently developed by the recipient; or

16.2.3 publicly available without breach of this agreement; or

16.2.4 released for disclosure by the disclosing party with the written consent of both parties; or

16.2.5 required to be disclosed in a response to a valid order of court or if disclosure is otherwise required by law.

16.3 The Service Provider will not be under any obligation; and the Municipality agrees that the Service Provider will not be under any obligation or forced in any manner or form; to disclose information about the private information and related activities of the Municipality's employees relating to materials kept on personal or other computing devices; to which the Service Provider will or might have access to during the term of this agreement;

16.3.1 The Service Provider agrees to inform the Municipality of the use of or existence of any such information on the Municipality's network or in the Municipality's environment but the Service Provider will not compromise its obligation to the right of privacy of any and all individuals as granted to such individuals through the Constitution of South Africa and the Municipality agrees to respect this reserved right as expressed by the Service Provider.

16.3.2 The Service Provider agrees to provide any and all information that it may have to the Municipality to enable the Municipality to fulfil its duties and/or obligations as required by the laws of the Republic of South Africa – but only after receipt of a formal written request has been lodged with the Service Provider by the Municipality.

16.4 Each party hereby undertakes to the other to make all relevant employees and agents aware of the confidentiality of the information and the provisions of this Clause 15 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, associates or agents with the provisions of this clause 16.

17. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF MATERIAL

17.1 The Municipality acknowledges that the Software or any part thereof, and/or module of same, and/or any enhancement thereto, and/or any customization and/or upgrade thereto that may be deployed, is the property of the Service Provider and nothing in this Agreement shall constitute the transfer of any Intellectual Property Rights to the Customer. The Customer shall only use the

Software and/or any enhancement thereto, under the terms and conditions of this Agreement.

- 17.2 The Municipality acknowledges that any and all of the trademarks, trade names, copyrights, patents and all other intellectual property and intellectual property rights used and/or embodied in and/or existing in connection with the Software and/or resulting there from, and/or which may come about due to any update of the Software, as well as any documentation, will be and shall solely remain the property of the Service Provider. The Municipality will not during, and/or at any time after the expiry and/or termination of this License in any way question or dispute the ownership and right of the Service Provider.
- 17.3 The Municipality shall not subject to the conditions of this agreement with directly or indirectly, for the duration of the Agreement or at any time thereafter:
- 17.3.1 claim ownership of the Intellectual Property Rights of the Service Provider;
 - 17.3.2 use the Intellectual Property or any confusingly similar trademark or other intellectual or industrial property in any manner not expressly authorised in writing by the Service Provider;
 - 17.3.3 submit any application to register the Intellectual Property or any other trademark or service mark, copyright, design right or invention of the Service Provider, without the Service Provider's prior written consent.

18. LIAISON WITH THE MUNICIPALITY

The Service Provider undertakes to liaise with the Municipality at all times during the tenure of this agreement.

19. FORCE MAJEURE

- 19.1 If the performance of the agreement by either party is delayed, hindered or prevented or is otherwise frustrated by the reason of force majeure, which shall mean war, civil commotion, fire, flood, action by any government or any event beyond the reasonable control of the party affected, then the party so

affected shall immediately notify the other party in writing, specifying the action of the force majeure and of the anticipated delay in the performance of the services agreed to herein.

19.2 The Municipality may either cancel the agreement or suspend the performance of the agreement for such period as the parties may mutually agree upon.

19.3 Should the force majeure persist for a period longer than that agreed upon by the parties, the parties may mutually agree to terminate the agreement. In this event the Municipality shall pay all fees and disbursements due and outstanding to the service provider within the financial limits of the agreements up to and including the date of termination.

20. NOTICES AND DOMICILIUM

Any notice to be given or which may be given in terms of or pursuant to this agreement shall be given in writing and shall be deemed validly served if delivered personally or seven (7) days after it shall have been posted by pre-paid registered mail to:

MUNICIPALITY: 101 Marsh Street
MOSSEL BAY
6500

SERVICE PROVIDER: International Business Gateway,
Corner New Road and 6th Avenue,
Midrand,
Gauteng,
1682

E-mail: info@esri-southafrica.com

Contact number: 011 238 6300 / 082 789 1705

which addresses the parties respectively choose as their domicilium citandi et executandi for all purposes under this agreement. Each party shall have the right from time to time to substitute its said domicilium with another address in the Republic of South Africa by giving notice of the

appointment of a new address to the other party which notice will be in writing.

21. ENTIRE AGREEMENT

- 21.1 This agreement constitutes the entire contract between the parties relative to the subject matter hereof and supersedes all representatives, warranties, agreements or undertakings previously made relative to such subject matter, and no such representations, warranties, agreements or undertakings shall be in any force or effect unless contained herein.
- 21.2 No variations of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.
- 21.3 The annexures to this agreement form an integral part hereof and shall be read as if incorporated herein, and in the event of a conflict between this agreement and the annexures, the annexures shall take preference.

22. INDULGENCES

No indulgence or relaxation which either party may allow to the other in regard to the carrying out of the other's obligation in terms of or pursuant to this agreement shall prejudice such party's rights under this agreement in any manner whatsoever, or be regarded as a waiver of such party's rights in terms of this agreement, or be constructed to act as an estoppel against that party or otherwise strictly enforce compliance of the other obligations in terms of this agreement.

23. SEVERABILITY

Should any provision of this agreement in any manner whatsoever contravene any law of the Republic of South Africa, such provision shall be deemed to be severable and shall not affect any other provision of this agreement nor effect the enforceability of those remaining provisions which are not in contravention of any law.

24. DISPUTE RESOLUTION

- 24.1 The parties accept that dispute may arise between the parties during the course of this agreement.
- 24.2 Any dispute which is agreed by the parties to be technical or operational in nature, shall be referred to a joint committee comprising the duly authorised representative of the Municipality and Service Provider's Managing Director, or alternates appointed by them, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of it having been referred to them.
- 24.3 Any dispute not resolved in accordance with the foregoing, will be submitted to and decided by arbitration.
- 24.4 The parties hereby agree that notwithstanding the referral of any matter for resolution, the parties shall continue to perform their respective obligations as provided for in this agreement pending the outcome of the resolution of any disputes in terms of this agreement.
- 24.5 Any dispute arising from or in connection with this agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.
- 24.6 This clause constitutes an irrevocable consent by the parties to any proceedings in terms thereof and no party shall be entitled to withdraw there from or to claim at any such proceedings that it is not bound by this clause.
- 24.7 This clause is severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason.

- 24.8 Unless otherwise agreed, arbitration proceedings shall be conducted in Mossel Bay. The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, No 42 of 1965, it being intended that if possible it shall be concluded within ten (10) business days of referral.
- 24.9 If the parties cannot agree on the appointment of an arbitrator within three (3) days after arbitration has been agreed upon, then the President, for the time being of the Cape Bar council will be requested to appoint the arbitrator.
- 24.10 The fees payable to the arbitrator shall be determined and agreed to between the arbitrator and the Parties and the Parties shall be jointly and severally liable for the payment of the arbitrator's fees.
- 24.11 The arbitrator shall be requested to hand down his / her award within ten (10) days after the completion of the arbitration.
- 24.12 The decision of the arbitrator shall be final and binding and may be an order of the Cape of Good Hope Provincial Division of the High Court upon the application by a Party to the arbitration.
- 24.13 Nothing contained in this clause 24 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

25. **BREACH**

25.1 Should either party ("defaulting party"):

25.1.1 breach any essential provision of this Agreement (irrespective of the materiality of such breach or provision) and fail to remedy such breach within 7 (seven) days after receiving written notice requiring such remedy from the other party; or

- 25.1.2 being a trust, be revoked, discharged or varied in any manner whatever of suffer any change in its beneficiaries after the signature date; or
- 25.1.3 being a natural person, publish notice of the voluntary surrender of his estate, or die; or
- 25.1.4 not being a natural person, be wound-up, liquidated, deregistered or placed under judicial management, in any such event whether provisionally or finally and whether voluntarily or compulsorily, or pass a resolution providing for any such event; or
- 25.1.5 have any application or other proceedings brought against or in respect of it in terms of which it is sought to be sequestered or placed under curatorship if a natural person, or, if not a natural person, deregistered, wound-up, liquidated or placed under judicial management, in any such event whether provisionally or finally; or
- 25.1.6 be or become insolvent or commit any act which is or, if it were a natural person, would be an act of insolvency as defined in the Insolvency Act No 24 of 1936; or
- 25.1.7 being a company, be deemed to be unable to pay its debts in terms of the Companies Act No 61 of 1973; or
- 25.1.8 compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally; or
- 25.1.9 alienate or encumber the whole or a major portion of its assets,
- 25.2 then the other party shall be entitled, without prejudice to its other rights in law including the right to claim damages, to cancel this Agreement or to claim immediate specific performance of all of the defaulting party's obligations, whether or not otherwise then due for performance."

26. CONSENT TO JURISDICTION

In terms of Section 45 of the Magistrates Court Act, No, 32 of 1944, the parties hereby consent to the jurisdiction of the Mossel Bay Magistrate Court in respect of any and all legal proceedings instituted under this agreement.

SIGNED at **MOSSEL BAY**, this _____ **DAY OF** _____
2022, in the presence of the undersigned witnesses:

WITNESSES:

1. _____

2. _____

MOSSEL BAY MUNICIPALITY

SIGNED at _____, this _____ **DAY OF** _____
2022, in the presence of the undersigned witnesses:

WITNESSES:

1. _____

2. _____

ESRI SOUTH AFRICA (PTY) LTD

ANNEXURE A

Item	Product	Number of Licenses
	Enterprise (Perpetual)	
1	ArcGIS Enterprise Standard (<i>Includes: ArcGIS GIS Server Standard (4 Core Default), Portal for ArcGIS, Uncapped Viewer User Type, 5 x Creator User Type, ArcGIS Schematics</i>)	1
2	ArcGIS Enterprise Editor User Type	5
3	ArcGIS Enterprise Field Worker User Type	5
	Enterprise - Capability Servers	
4	ArcGIS Image Server (up to 4 Cores)	1
5	ArcGIS Monitor for ArcGIS Server (up to 4 Cores)	0
	Desktop	
6	ArcGIS Desktop Standard Concurrent Use - Primary License	1
7	ArcGIS Desktop Standard Concurrent Use - Secondary License	2
8	ArcGIS Desktop Basic Concurrent Use - Primary License	1
9	ArcGIS Desktop Basic Concurrent Use - Secondary License	9
	Desktop - Extensions	
10	ArcGIS 3D Analyst Concurrent Use - Primary	1
11	ArcGIS Spatial Analyst Concurrent Use - Primary	1
12	ArcGIS Workflow Manager Concurrent Use - Primary	1
13	ArcGIS Network Analyst Concurrent Use - Primary	1
14	ArcGIS Data Interoperability Concurrent Use - Primary	1
	Cloud (ArcGIS Online)	
15	ArcGIS Online Viewer User Type - Term License	5

Item	Product	Number of Licenses
	Cloud (ArcGIS Online)	
16	ArcGIS Online Editor User Type - Term License (250 credits per user)	5
17	ArcGIS Online Field Worker User Type - Term License (250 credits per user)	5
18	ArcGIS Online Creator User Type - Term License (500 credits per user)	1
19	ArcGIS Online Service Credits (1,000 Credits per bundle)	8 bundles
20	ArcGIS for Developers - Enterprise Subscription	1

ANNEXURE B

(a) Licensing Costs – Year 1 (period ending 30 June 2022)

Nr	Description	Price per item (inclusive of VAT)
1	Capped ELA	
1.1	ArcGIS Enterprise Standard (<i>Includes: ArcGIS GIS Server Standard (4 Core Default), Portal for ArcGIS, Uncapped Viewer User Type, 5 x Creator User Type, ArcGIS Schematics</i>)	R113 310.82
1.2	ArcGIS Enterprise Editor User Type	R4 605.75
1.3	ArcGIS Enterprise Field Worker User Type	R7 855.65
Enterprise - Capability Servers		
1.4	ArcGIS Image Server (up to 4 Cores)	R56 646.13
1.5	ArcGIS Monitor for ArcGIS Server (up to 4 Cores)	R56 646.13
Desktop		
1.6	ArcGIS Desktop Standard Concurrent Use – Primary License	R36 263.30
Nr	Description	Price per item (inclusive of VAT)
1.7	ArcGIS Desktop Standard Concurrent Use – Secondary License	R28 978.97
1.8	ArcGIS Desktop Basic Concurrent Use – Primary License	R16 996.77
1.9	ArcGIS Desktop Basic Concurrent Use – Secondary License	R12 140.55
Desktop – Extensions		
1.10	ArcGIS 3D Analyst Concurrent Use – Primary	R12 140.55
1.11	ArcGIS Spatial Analyst Concurrent Use – Primary	R12 140.55
1.12	ArcGIS Workflow Manager Concurrent Use – Primary	R12 140.55
1.13	ArcGIS Network Analyst Concurrent Use – Primary	R12 140.55
1.14	ArcGIS Data Interoperability Concurrent Use – Primary	R12 140.55

Cloud (ArcGIS Online)		
1.15	ArcGIS Online Viewer User Type – Term License	R2 340.25
1.16	ArcGIS Online Editor User Type – Term License (250 credits per user)	R4 605.75
1.17	ArcGIS Online Field Worker User Type – Term License (250 credits per user)	R7 855.65
1.18	ArcGIS Online Creator User Type – Term License (500 credits per user)	R11 273.45
1.19	ArcGIS Online Service Credits (1,000 Credits per bundle)	R2 340.25
1.20	ArcGIS for Developers – Enterprise Subscription	R103 598.90
2	Capped ELA 15 % VAT included – Combined Bulk Price for 19 listed items above	R469 514.93
(1.5 not to be included in the combined bulk price)		

(b) Development, Support and Maintenance Cost – Year 1 (period ending 30 June 2022)

Nr	Description	Price per item (inclusive of VAT)
1	Hourly rate for <u>GIS Systems Architect</u> <u>(Design and Implement GIS Architecture solution)</u>	R1 207.50
2	Hourly rate for <u>GIS Systems Technician</u> <u>(Configure GIS Infrastructure)</u>	R1 092.50
3	Hourly rate for <u>GIS Specialist (Data capture and maintenance)</u>	R977.50
4	Hourly rate for <u>Senior GIS Specialist</u> <u>(Data management, data manipulation, geo-processing and data quality management)</u>	R1 035.00

5	Hourly rate for <u>GIS Consultant</u> (<u>Data modelling and Geo-database design</u>)	R1 092.50
6	Hourly rate for <u>Junior GIS Developer Python Scripting and JavaScript</u>	R977.50
7	Hourly rate for <u>GIS Developer (JavaScript, database integration and net development, C#)</u> 15 % VAT included.	R1 092.50
8	Hourly rate for <u>Senior GIS Developer (C # and Java development)</u>	R1 207.50
9	Traveling – Rate per km	R5.75
10	Accommodation – Night per person	R1 150.00

(c) Training – Year 1 (period ending 30 June 2022)

Nr	Description	Price per item (inclusive of VAT)
1	Hourly rate for <u>GIS Systems Architect</u> (<u>Design and Implement GIS Architecture solution</u>)	R1 207.50
2	Hourly rate for <u>GIS Systems Technician</u> (<u>Configure GIS Infrastructure</u>)	R1 092.50
Nr	Description	Price per item (inclusive of VAT)
3	Hourly rate for <u>GIS Specialist (Data capture and maintenance)</u>	R977.50
4	Hourly rate for <u>Senior GIS Specialist</u> (<u>Data management, data manipulation, geo-processing and data quality management</u>)	R1 035.00
5	Hourly rate for <u>GIS Consultant</u> (<u>Data modeling and Geo-database design</u>)	R1 092.50
6	Hourly rate for <u>Junior GIS Developer Python Scripting and JavaScript</u>	R977.50

7	Hourly rate for <u>GIS Developer</u> (JavaScript, database integration and .net development, C#)	R1 092.50
8	Hourly rate for <u>Senior GIS Developer</u> (C # and Java development)	R1 207.50
9	Traveling – Rate per km	R5.75
10	Accommodation – Night per person	R1 150.00

Additional Escalation

CPIX	YES
Additional Escalation YEAR 2 to YEAR 10	No additional escalation

- (i) The annual escalation percentage will be based on the CPIX rate of South Africa as published by Stats SA for March each year. The escalation will be applied from 1 July of year 2 to year 10, subject to (ii) below;
- (ii) The Municipality reserves the right to negotiate the prices from Year 2 as per SITA's transversal contract;