

# **DRAFT SERVICE LEVEL AGREEMENT**



**MADE AND ENTERED INTO BETWEEN**

**MOSSEL BAY MUNICIPALITY**

Herein represented by **Adv. M G Giliomee** in his capacity as **Municipal Manager**  
properly authorised thereto in terms of **Resolution** \_\_\_\_\_

(hereinafter referred to as the Municipality)

AND

**IGNITE ADVISORY SERVICES (PTY) LTD**

**Registration number: 2006/035577/07**

Herein represented by **Mr. A Butler** properly authorised thereto in his capacity as  
**Chief Executive Officer.**

(hereinafter referred to as the Service Provider)

## **PREAMBLE**

**WHEREAS** the Municipality requested tenders in terms of Tender 122/2020/2021 for the provision of an organisational and individual performance management system and professional services 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 2 August 2021 to 30 June 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 Ignite Advisory Services (Proprietary) Limited, 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 4<sup>th</sup> Floor, Cento East Wing, Bella Rosa, 21C Durbanville Avenue, Bellville, 7530.

**"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 2 August 2031 and shall terminate on 30 June 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**

The Service Provider will address the following business objectives in the implementation of the required solution:

- 4.1 Implement an Electronic Performance Management System with an audit record of all amendments; updates and processes linked to an user id and date stamp;
- 4.2 The proposed system should be web based with access gained to the system via a web browser and an internet connection.
- 4.3 Implement a system to address the monitoring of organisational and individual performance management processes;
- 4.4 Implement a system for the Service Delivery Budget SDBIP to be captured, reporting of actual performance and extraction of information; Implement a system for the Financial information in the SDBIP to be populated from the Financial System via seamless integration based on mSCOA prescriptions from National Treasury and summaries as required by Management.
- 4.5 Implement a system to address Portfolio of evidence management;
- 4.6 Implement a system to facilitate the updating of organisational and individual performance indicators;
- 4.7 Implement a system that generate performance reports;
- 4.8 Implement a system to facilitate the development of Individual Performance Plans (including self-review and Manager Review);
- 4.9 Implement a system to facilitate Individual Performance assessments;

- 4.10 Implement a system to facilitate the moderation of individual performance evaluations;
- 4.11 Implement a system to generate performance reports;
- 4.12 Provision of helpdesk services to assist users;
- 4.13 Provision of Professional Services as specified in the document;
- 4.14 Tenderers are required to complete the following tables in the order as presented:
- 4.15 Organisational Performance Management System
- 4.16 Organisational Performance Management Reporting
- 4.17 Individual Performance Management System
- 4.18 Performance Moderation
- 4.19 Reporting (Excel & Pdf)
- 4.20 Portfolio of Evidence
- 4.21 Security/Archiving/User Management
- 4.22 Support and Related Matters
- 4.23 Professional Services

## **5. CONDITIONS**

- 5.1 Mossel Bay Municipality requires the complete solution to be deployed at identified offices of the Municipality.
- 5.2 The major requirements, main features and functional specifications of the System are detailed and attached hereto as Annexure A.
- 5.3 The service provider confirms that its system complies with the requirements in Annexure A.

5.4 The Key Performance Indicators in terms of which the Service Providers' performance will be measured is attached hereto as Annexure B.

## 5.5 SUPPLY AND INSTALLATION

5.5.1 The following requirements are applicable on the supply and the installation:

- The software must be able, on implementation date, to seamlessly integrate with the financial system used by Mossel Bay Municipality at no additional or hidden cost not included in the pricing schedule.
- The supplied software must be the latest version on the general release.
- Unless otherwise stated, all ancillary software necessary to comply with the requirements, whether standard or specifically developed by the bidder, will be assumed to have been included in the offer.

5.5.2 Installation shall mean:

- **Delivery** to the various premises of the Municipality, all such software as may be required or specified by the supplier.
- **Signing off** by the Municipal Manager of the Mossel Bay Municipality or his/her delegated authority.

## 5.6 USER MANUALS AND TECHNICAL REFERENCE MANUALS

All relevant operations and reference manuals and other documentation needed to allow every element of software and hardware to be operated to its full potential, are to be provided. It is a requirement of Mossel Bay Municipality that all Tenderers provide the Municipality with comprehensive and well documented training, user and procedure manuals with associated documentation at the time of submission of the Tenderers proposal to Mossel Bay Municipality. Failure to adhere to this request will result in the bid being deemed non-responsive.



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;

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 C attached hereto.
- 12.3 The Municipality shall remunerate the service provider within 30 days of receipt of a valid tax invoice.
- 12.4.1 Escalation will be applicable for year 2 and onwards and will be calculated at 6% per annum.
- 12.4.2 All escalations will be applied on all rates, excluding once off implementation cost.
- 12.5 All rates and fees are inclusive of VAT.
- 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 C. 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:** 4<sup>th</sup> Floor, Cento East Wing, Bella Rosa  
21C Durbanville Avenue  
Bellville  
7530

E-mail: [abutler@igniteconsult.co.za](mailto:abutler@igniteconsult.co.za)

Contact number: 021 914 1229 / 082 465 7270

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 or 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 sequestrated 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** \_\_\_\_\_  
2021, in the presence of the undersigned witnesses:

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**MOSSEL BAY MUNICIPALITY**

**SIGNED** at \_\_\_\_\_, this \_\_\_\_\_ **DAY OF** \_\_\_\_\_  
2021, in the presence of the undersigned witnesses:

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**IGNITE ADVISORY SERVICES (PTY)  
LTD**

**ANNEXURE A****2.1.4 ORGANISATIONAL AND INDIVIDUAL PERFORMANCE MANAGEMENT SYSTEM AND SPECIFICATIONS****2.1.4.1 ORGANISATIONAL PERFORMANCE MANAGEMENT SYSTEM (sections as referenced in TDR122/2020/2021)**

| No         | Description  |
|------------|--|
| 2.1.4.1.1  | Clear alignment to the comments of MFMA circular 13 on SDBIP: <ul style="list-style-type: none"> <li>• Monthly projections of revenue to be collected for each source.</li> <li>• Monthly projections of expenditure (operating and capital) and revenue for each vote.</li> <li>• Quarterly projections of service delivery targets and performance indicators for each vote.</li> <li>• Ward information for expenditure and service delivery.</li> <li>• Detailed capital works plan broken down by ward over three years.</li> </ul> |
| 2.1.4.1.2  | Clear segregation of Top Level and Departmental SDBIP.   |
| 2.1.4.1.3  | Capability to link indicators to the Strategic Objectives of Local, Provincial and National Government.  |
| 2.1.4.1.4  | Capability to link indicators to the Risks, Turnaround plans or other strategic plans.   |
| 2.1.4.1.5  | Capability to link indicators to the segments of mSCOA (Funding, Function, Item, Regional Indicator, Municipal Standard Classification, Project and Costing).  |
| 2.1.4.1.6  | Ability to incorporate organizational structure in the updating and reporting processes as well as the segregation of these processes to designated users.   |
| 2.1.4.1.7  | Fields to report on Performance Comments and Corrective Measures (in cases of underperformance) per KPI.   |
| 2.1.4.1.8  | Ability to set deadlines for reporting on indications on a monthly basis.  |
| 2.1.4.1.9  | Automated Reminder E-mails to inform users of deadlines for reporting.   |
| 2.1.4.1.10 | Ability to report actual performance on KPIs in number, percentage or Rand value.  |
| 2.1.4.1.11 | Visual color codes to indicate performance in relation to target.  |
| 2.1.4.1.12 | Customizable calculation types to calculate performance (eg. <i>Losses of less than 10%</i> ).   |



**2.1.4.2 ORGANISATIONAL PERFORMANCE MANAGEMENT REPORTING**

| No        | Description   |
|-----------|---|
| 2.1.4.2.1 | System must allow for the viewing to performance in line with the structure of the organisation ( <i>Municipal Manager must be able to see all reported performance, while Director Corporate Services must be able to view the performance of all department within the directorate</i> ). |
| 2.1.4.2.2 | Functionality to report via graphs per department and specified time period ( <i>both bar and pie graphs</i> ).   |
| 2.1.4.2.3 | Functionality to broadly customize reports and select various filter by fields.   |
| 2.1.4.2.4 | Option to generate reports Onscreen or in Microsoft Excel format.   |
| 2.1.4.2.5 | Must be able to generate reports suitable quarterly, mid-year and annual performance reports - MFMA Section 52, Section 72 and Section 46 of MSA  |

**2.1.4.3 INDIVIDUAL PERFORMANCE MANAGEMENT SYSTEM**

| No         | Description  |
|------------|--|
| 2.1.4.3.1  | Set the dates of the key events of the evaluation periods for the financial year.  |
| 2.1.4.3.2  | Confirm the evaluation periods.  |
| 2.1.4.3.3  | Default settings for the performance plan.   |
| 2.1.4.3.4  | Uploading of new plans: <ul style="list-style-type: none"> <li>• Import from SDBIP.</li> <li>• Import from Non-SDBIP.</li> </ul> |
| 2.1.4.3.5  | Performance Plans that include both KPIs and Core Competencies.  |
| 2.1.4.3.6  | Ability to select from predetermined Core Competencies.  |
| 2.1.4.3.7  | Function to assign weights to KPIs.  |
| 2.1.4.3.8  | Library of indicators.   |
| 2.1.4.3.9  | Adding indicators and core competencies from previous year.  |
| 2.1.4.3.10 | Adding new indicators.   |
| 2.1.4.3.11 | Adding new core competencies.  |
| 2.1.4.3.12 | Listing of individual performance plans and plan status in line with organisational structure.                                   |
| 2.1.4.3.13 | Option for self-evaluation by system & Non-system users.   |

| No         | Description   |
|------------|---|
| 2.1.4.3.14 | Option for evaluation by Manager.   |
| 2.1.4.3.15 | Evaluation template for non-system users.   |
| 2.1.4.3.16 | Possible to maintain a list of quick entry tables which users can easily access.  |
| 2.1.4.3.17 | Users may have more than one role (e.g Module administrator, admin, manager).   |
| 2.1.4.3.18 | Different user names may be assigned to the same role.  |
| 2.1.4.3.19 | Designations may be an attribute of role (e.g. Chief Information Officer).  |
| 2.1.4.3.20 | Provides for time restrictions, which escalate the work to another user or sends a message to a specified user should the work not be performed within the specified time limit.  |
| 2.1.4.3.21 | Alerts must be able to trigger the execution of actions (e.g. collecting information from a database, performing calculations, etc.).   |
| 2.1.4.3.22 | System must allow for the viewing to performance in line with the structure of the organisation ( <i>Municipal Manager must be able to see all reported performance, while Director Corporate Services must be able to view the performance of all department within the directorate</i> ). |
| 2.1.4.3.23 | Allow for the upload of Performance Development Plans (PDP'S) in line with the guidelines/ format of COGTA.   |
| 2.1.4.3.24 | System capacity to accommodate 2500 users   |

#### 2.1.4.4 PERFORMANCE MODERATION

| No        | Description  |
|-----------|--|
| 2.1.4.4.1 | Moderation at 3 levels.                              |
| 2.1.4.4.2 | Allowing changes to scoring and performance comment. |
| 2.1.4.4.3 | Printable moderation summary (PDF).                  |

#### 2.1.4.5 REPORTING (EXCEL & PDF)

| No        | Description   |
|-----------|---|
| 2.1.4.5.1 | Export of performance evaluation document for non-system users. |
| 2.1.4.5.2 | Export of Performance Plans.                                    |
| 2.1.4.5.3 | Performance Status Report.                                      |

| No        | Description  |
|-----------|--|
| 2.1.4.5.4 | Evaluation Status Report.  |
| 2.1.4.5.5 | Evaluation Score Report.   |
| 2.1.4.5.6 | Personal Development Plan Report.  |
| 2.1.4.5.7 | Functionality to report via graphs per department and specified time period (both bar and pie graphs). |
| 2.1.4.5.8 | Functionality to broadly customize reports and select various filter by fields.                        |
| 2.1.4.5.9 | Option to generate reports Onscreen, PDF and in Microsoft Excel format.                                |

#### 2.1.4.6 PORTFOLIO OF EVIDENCE

| No        | Description   |
|-----------|---|
| 2.1.4.6.1 | Saving of PDF, Word and Excel as attachments (max size 50mb). |
| 2.1.4.6.2 | Saving of e-mails and attachments with metadata as a record.  |
| 2.1.4.6.3 | Drawing of Reports in PDF and Excel.                          |

#### 2.1.4.7 SECURITY/ARCHIVING/USER MANAGEMENT

| No        | Description   |
|-----------|---|
| 2.1.4.7.1 | Access control can be determined at Module Administrator Level.   |
| 2.1.4.7.2 | Provides a log of every activity performed on a document and system.  |
| 2.1.4.7.3 | Profile history.  |
| 2.1.4.7.4 | Controls access rights to data for: <ul style="list-style-type: none"> <li>▪ Read only</li> <li>▪ Create</li> <li>▪ Update</li> <li>▪ Delete</li> </ul> |
| 2.1.4.7.5 | Access control may be specified at: <ul style="list-style-type: none"> <li>▪ User level</li> <li>▪ Group Level</li> <li>▪ Role Level</li> </ul>         |
| 2.1.4.7.6 | A process may be designed and changed by one or more specified owners of a process.   |
| 2.1.4.7.7 | An owner of a group may be able to view and perform the tasks of all members of the group.  |

| No         | Description  |
|------------|--|
| 2.1.4.7.8  | Login Attempt Report.  |
| 2.1.4.7.9  | User Activity Report.  |
| 2.1.4.7.10 | Disaster Recovery – Plan in place to roll-back data to specific point in time. |
| 2.1.4.7.11 | Data to be backed up on a weekly basis.  |
| 2.1.4.7.12 | Testing of backup on regular intervals – at least monthly                      |
| 2.1.4.7.13 | System availability reports  |
| 2.1.4.7.14 | System Updates and Maintenance reports   |

#### **2.1.4.8 SUPPORT AND RELATED MATTERS**

| No        | Description  |
|-----------|--|
| 2.1.4.8.1 | Ongoing support via a helpdesk and e-mail. Email responses within a 48-hour period                                   |
| 2.1.4.8.2 | Maintenance of updating modules to comply with legislative requirements.   |
| 2.1.4.8.3 | Hands-on support to implement performance management on senior management and individual staff as and when required. |
| 2.1.4.8.4 | Training sessions to staff to effectively use the system.  |
| 2.1.4.8.5 | Ensuring adequate skills transfer to relevant municipal officials  |

#### **2.1.4.9 PROFESSIONAL SERVICES**

| No        | Description   |
|-----------|---|
| 2.1.4.9.1 | Facilitation of performance reviews of the senior management teams. |
| 2.1.4.9.2 | Upload of data.   |
| 2.1.4.9.3 | Ad-hoc Training.  |
| 2.1.4.9.4 | Drafting of SDBIP.  |
| 2.1.4.9.5 | Drafting of Integrated Development Plan.                            |
| 2.1.4.9.6 | Drafting Annual Report.   |

## ANNEXURE B

### KEY PERFORMANCE INDICATORS

The following key performance indicators will be applicable to this tender and will be measured at least on an annual basis to assess the performance:

1. **Availability of system at least 98% of the time per month.**  
**Standard:** System availability at least 98% of the time per month.  
**Target:** 98% achievement.  
**Proof of evidence:** System logs.
  
2. **Attend to all requests timeously.**  
**Standard:** Support provided on e-mail related queries attended to within 48 hours.  
**Target:** 48 Hours.  
**Proof of evidence:** Email response to enquiry.

## ANNEXURE C

### Organisational Performance:

| Item no | Description   | Rate per item (Inclusive of VAT) |
|---------|---|----------------------------------|
| 1.      | Implementation cost (Import of data)<br>(Once off implementation cost, payable on sign-off) | R69 000                          |
| 2.      | Annual licence fee  | R407 100                         |
| 3.      | SDBIP User description fee  | Incl. above                      |
| 4.      | Hosting fee for data (per mb)   | R0.1725                          |

### Individual Performance Management:

| Item no | Description   | Rate per item (Inclusive of VAT) |
|---------|---|----------------------------------|
|         | Implementation cost (import of data)<br>(Once off implementation cost, payable on sign-off) | R69 000                          |
| 1.      | Individual Performance Management Fee:<br>Rate for unlimited licenses                       | Incl. above                      |

### Professional Services:

| Item no | Description  | Rate per item (Inclusive of VAT) |
|---------|--|----------------------------------|
| 1.      | Loading of SDBIP   | R14 950                          |
| 2.      | Loading Amendments to the SDBIP  | R7 475                           |
| 3.      | Drafting Performance Agreements of Senior Management                   | R1 725                           |
| 4.      | Assisting with the performance evaluations of Senior Management        | R20 700                          |
| 5.      | Drafting of Top Layer SDBIP KPI systems descriptions                   | R41 400                          |
| 6       | Additional development for improvements and compliance (rate per hour) | R1 265                           |
| 7.      | Drafting of SDBIP  | R102 350                         |
| 8.      | Drafting of Integrated Development Plan                                | R204 700                         |
| 9.      | Drafting of Annual Report  | R126 500                         |

Draft Service Level Agreement TDR122/2020/2021

|     |                                       |         |
|-----|---------------------------------------|---------|
| 10. | Training on system (per day)          | R10 120 |
| 11. | Support Service to users via Helpdesk | NIL     |
| 12. | Traveling – Rate per km               | R4      |
| 13. | Accommodation – per night per person  | R1 090  |

|                   |    |
|-------------------|----|
| Annual escalation | 6% |
|-------------------|----|