

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

INCA PORTFOLIO MANAGERS (PTY) LTD

Registration number: 2008/024107/07

Herein represented by **Mr. A J van Zyl** 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 184/2020/2021 for the design, supply, delivery and installation ; 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 1 November 2021 to 30 June 2032 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”: Inca Portfolio Managers (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 4th 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 01 November 201 and shall terminate on 30 June 2032.

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 The design, supply, delivery and installation of a Long-term Financial Planning Tool, which includes:

- Infrastructure planning; and
- Interface with the IDP, infrastructure growth plan and infrastructure master plan, spatial information and Financial and/or Document System

4.2 The development of a Long-term Financial Plan by drawing information from the TOOL for at least next 10 years, which includes the:

- Economic modelling;
- Financial modelling; and
- Detailed revenue forecasting

4.3 The Municipality have embarked on a middle management development program. Some of the students have completed enough models to be of assistance with the development of the LTFP.

The Municipality will divide these employees into study groups, a maximum of three groups, and provide them the same specifications. The assignment to these groups will be to develop a long-term financial plan that complies with the specifications, without the necessity of developing the tool for the annual updates.

4.4 It is expected of the service provider to assess the LTFP developed by the study groups and provide feedback. Any facts included in these plans may be used by the successful bidder to improve the end product of the Municipality.

4.5 Prospective Bidders must familiarise themselves with the unique environment of Mossel Bay Municipality with special reference to capacity, internal processes, needs for training and support in respect of implementation.

5. **CONDITIONS**

5.1 REQUIREMENTS OF THE LONG-TERM FINANCIAL PLANNING TOOL

5.1.1 The development of the TOOL must comprise of the following 3 modules:

- Economic Modelling;
- Financial Modelling; and
- Revenue Forecasting.

5.1.2 The data of the TOOL must be stored in a SQL database. The TOOL must be able to import and export information from external data sources and Excel. Reporting from the SQL database should also include options to Excel, Word, PDF etc.

5.1.3 The TOOL should be robust to be used also as part of the financial management and annual reporting system of the municipality. Therefore, specific financial information that is contained in the budget, the annual financial statements, the IDP and the annual report must be captured in the TOOL. The TOOL must be able to utilise data of the municipality's geo spatial information system (GIS) and must be able to provide all relevant information back to be represented in the GIS system of the municipality. In simpler terms, there need to be integration between the different systems of the municipality and the TOOL.

5.1.4 If the tool will be making use of any geo spatial data, it must be able to use the municipality's geo spatial data sets. Any additional attributes collected/ created by this tool must be made available in a format which the municipality can use in ESRI ARC GIS. The municipality makes use of ESRI ARC GIS for their corporate GIS environment and for assets & infrastructure data.

5.1.5 The three modules in the TOOL must operate in unison for use by municipal officials.

5.1.6 The Economic Modelling, Financial Modelling and Revenue Forecasting modules must be developed within the framework of financial management accounting principles.

5.2 ECONOMIC MODELLING MODULE must, inter alia, have functionality for:

5.2.1 The economic profile of the municipal area.

5.2.2 The historical growth in the municipal economy and the expected growth.

5.2.3 Linkage to the IDP.

5.2.4 Alignment to the service delivery priorities of Council.

5.2.5 Spatial alignment.

5.3 FINANCE MODELLING MODULE must, inter alia, have functionality for:

5.3.1 The previous 3 year's historical information (2017/2018; 2018/2019; 2019/2020) (Income Statement) to provide for a basis to reflect on the financial performance of the Municipality in the past and to plot future financial trends.

5.3.2 The latest approved 3 year's MTREF operating budget (2021/22, 2022/23, 2023/24), to provide for a basis to project the financial performance of the Municipality for the next 3 years. The format must be the same as the historical Income Statement aforementioned.

5.3.3 Also include the information of the first Adjustment Budget for 2021/2022, so called Roll over Budget.

5.3.4 Appropriate corresponding summary tables (as prescribed by National Treasury) must be provided for the capital budget per Municipal Standard classification.

5.3.5 It must have the capability to provide forecasting for at least the next 7 years, therefore 10 years in total if the MTREF period is added.

5.3.6 The following ratios must be provided for (Use the formulas as per Mossel Bay policies or if not included in the policies the formulas in the in MFMA circular 71):

5.3.6.1 Current ratio;

- 5.3.6.2 Debtors collection ratio;
 - 5.3.6.3 Employee cost ratio;
 - 5.3.6.4 Cash generated from operations as % of own Revenue;
 - 5.3.6.5 Cost coverage;
 - 5.3.6.6 Debt to Revenue;
 - 5.3.6.7 Gearing ratio;
 - 5.3.6.8 Water distribution losses;
 - 5.3.6.9 Electricity distribution losses;
 - 5.3.6.10 Outstanding services debtors as % of total annual service revenue; and
 - 5.3.6.11 Revenue growth.
- 5.3.7 Each input for these ratios must be linked to the model and data set or provide for separate easy input by municipal officials.
- 5.3.8 These ratios must be provided for the previous 3 years (historical), the next 3 years (as per latest MTREF), plus 7 years thereafter to complete the 10 year planning period.
- 5.3.9 In addition to the ratio, a list of financial indicators must be developed and presented in the TOOL in a “dashboard” format. These dashboard items will be provided by the municipality.
- 5.3.10 Sensitivity analysis of external funding calculations to indicate the impact on the financial position and future rates and tariffs of future borrowings within the policy framework of Council must be developed and provided for easy input by municipal officials.
- 5.3.11 Listing of infrastructure projects for a 10-year planning period. These projects must be determined in conjunction with all the departments of the municipality.
- 5.3.12 Project costing calculation. For example: If an additional water desalination plant is to be developed in year 4, the TOOL must provide to plot the costing of the project and associated funding calculations. The current budget costing tool used by the municipality must be used as basis and build and improved in the TOOL.
- 5.3.13 The municipality has various ring-fenced reserves and provisions. The module must provide for functionality of this for a 10-year planning period.

5.3.14 The service provider must review all reserves and provision policies of the Municipality including the borrowing, funding and reserve policy and the liquidity policy.

5.3.15 Link all information to the workings and assumptions that are being used.

5.3.16 Provision for appropriate graphs, tables and figures.

5.3.17 Provision for a Net Present Value (NPV) calculator.

5.3.18 The TOOL must be able to make use of the municipality's geo spatial information (GIS) and must be able to provide all relevant information back to be represented in the GIS system of the Municipality.

5.4 REVENUE FORECASTING MODULE must, inter alia, have functionality for:

5.4.1 Projection of the financial impact of current and future demand for services offered by the municipality.

5.4.2 Estimations of the growth and economic potential of the municipal area and the related vision and strategy of the municipality.

5.4.3 Quantification of the financial and non-financial impact of the identified needs and service demand based on detailed economic and financial modelling.

5.4.4 Detailed revenue forecasting taking all revenue sources into account in relation to changes in demands, as industries and businesses establish and communities grow over 10 years. This includes the consideration of the growth in revenue base, grants and subsidies, development charges etc.

5.4.5 Quantification of the development charges (capital contributions) for current and future developments within the municipal area.

5.4.6 Built-in flexibility, using appropriate assumptions about economic conditions, future spending scenarios, and other salient variables.

5.4.7 The municipality to test strategic decision (scenario planning).

5.4.8 The Revenue Forecasting module must also be able to be used in tariff modelling and –

- Provide for calculation of cost reflective tariffs for consumer's tariffs such as Electricity, Water, Refuse removal and Sewage.
- Cater for all types of tariff structures. Whatever methods is currently used by the Municipality.

- Cater for various scenarios for residential, industrial business, indigents, low, medium, high users, low income consumers, high income consumers.
- Differentiate between different categories for property rates tariffs, as well as between the wards of the municipality.
- Differentiate between basic charges, fixed charges and variable tariffs based on consumption and a combination thereof for services.

5.4.9 The development of the TOOL will be complex and require a good understanding and application. It will be required by the bidder to contract in the appropriate technical experience, if not internally available.

5.4.10 When developing the TOOL, the 15 business processes of National Treasury must be considered. More specifically the following business processes must be understood and incorporated, where required in the TOOL:

- 5.4.10.1 Municipal Budgeting;
- 5.4.10.2 Financial Accounting Costing and reporting;
- 5.4.10.3 Project Accounting;
- 5.4.10.4 Customer Care, Credit Control and Debt Control;
- 5.4.10.5 Valuation Roll Management Land Use & Building Control; and
- 5.1.40.6 Revenue Cycle Billing.

5.5 REQUIREMENTS OF THE LTFP

5.5.1 Use the information contained in the TOOL (economic, financial and revenue forecasting) in the compilation of the LTFP for the municipality.

5.5.2 In the compilation of the LTFP, the IDP, infrastructure growth plan and infrastructure master plan must be considered to ensure alignment.

5.5.3 The successful bidder must include the infrastructure projects for the next 10 years in the LTFP. These projects will be provided by the municipality. It will be required from the bidder to have discussions with the relevant stakeholders, most notably all the Directors, the Chief Financial Officer and Municipal Manager on these projects, and to make appropriate recommendations.

- 5.5.4 The impact of the possible Industrial Development Zone (IDZ) must be considered in the compilation of the LTFP as well as the effect of the Future of PETROSA.
- 5.5.5 Scenarios must be provided in the LTFP on the impact of the IDZ and PETROSA on the municipality, detailing both financial and non-financial considerations and implications.
- 5.5.6 The Western Cape Provincial Government data must also be considered. The sector plans must be included in the LTFP. A comprehensive review of this is therefore required. This data must specifically be sourced from the Western Cape Provincial Government.
- 5.5.7 The previous 3 year's historical information as per the audited Annual Financial Statements must be included in the LTFP to provide the reader with a basis to reflect on the financial performance of the Municipality in the past and to plot future financial trends.
- 5.5.8 The first draft LTFP must be submitted to the CFO by 31 October 2021 for consideration. All the final dates in included in the Key performance indicators as included in Section 1.6.3 of the document.
- 5.5.9 In the compilation of the LTFP document the following must be included:
 - 5.5.9.1 Index with the appropriate table of contents and where relevant a list of tables used in the document and a list of figures used in the document;
 - 5.5.9.2 Executive summary;
 - 5.5.9.3 Recommendations;
 - 5.5.9.4 Introduction;
 - 5.5.9.5 Objectives of the LTFP;
 - 5.5.9.6 Alignment with the IDP, infrastructure growth plan and infrastructure master plan;
 - 5.5.9.7 Development of a long term, economic based, sustainable water funding model;
 - 5.5.9.8 Assessment of the current challenges facing the municipality;
 - 5.5.9.9 Water, Sewage, Electricity, Roads, Stormwater and Solid Waste infrastructure planning;

- 5.5.9.10 Financial overview (2017/18, 2018/19 and 2019/20) and Budget overview of current Budget year 2020/21, the MTREF (2021/22, 2022/23, 2023/24), plus the next 7 years thereafter.
- 5.5.9.11 Funding resources;
- 5.5.9.12 Cash management;
- 5.5.9.13 The “Recommendations” (paragraph 1.6.2.9.3 above) must be provided in a separate document with the following headings:
- No, Recommendation, Responsible director, Date required and Comments from responsible director.
 - The objective of this is provide for a separate document to assign responsibility to the respective directors for the implementation of these recommendations.
- 5.5.10 The municipality has various ring-fenced reserves and provisions. The LTFP must include an estimation of this for 10-year planning period.
- 5.5.11 The LTFP must provide for a shadow credit rating of the municipality financial performance benchmarked against an absolute set of financial parameters and the relative performance of the municipal sector. The shadow credit rating will indicate the mostly likely conclusion any lender would come to as it relates to the level of risk involved in providing long term funding to the Mossel Bay Municipality.
- 5.6 The service provider’s performance will be measured in terms of the key performance indicators as per Annexure A attached to this agreement.

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 5, 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 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.

- 12.5 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.
- 12.6 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: Unit F14, Pinewood Office Park

33 Riley Road, Woodmead

Sandton

2146

[E-mail: attie.vanzyl@inca.co.za](mailto:attie.vanzyl@inca.co.za)

Contact number: 011 202 2200/2201

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** _____
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. _____

**INCA PORTFOLIO MANAGERS (PTY)
LTD**

ANNEXURE A

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. **Supply, delivery and installation of a Tool that complies with all functionalities as per the specifications**

Standard: Sign-off letter from the Municipality by no later than 31 March 2022.

Target: 100% achievement.

Proof of evidence: Functional Tool loaded on the local network of Mossel Bay Municipality

2. **Submission of Status Quo Report.**

Target: Report submitted not later than 30th November 2021.

Standard: Present a written report consisting of the narratives backed by ratios, tables and graphs, clearly presenting the financial situation against a geographical, socio-economic and household Infrastructure backdrop and the key challenges the municipality is facing. The written report must also provide the forecast of financial statements and ratios against which the municipality can monitor and benchmark its future financial performance.

Proof of evidence: Submitted report.

3. **Submission of Long-term Financial Plan**

Target: Report submitted not later than 31st January 2022.

Standard: The long-term financial plan must be informed by the outcomes of the TOOL, the status quo information and must serve as:

- Input to the MTREF budget process;
- Guideline for financial budget related policies;
- Form the basis for strategic decision makings; and
- Provide the financial impact of external eventualities and scenarios that the Municipality will encounter over the medium term to long term.

Proof of evidence: Submitted Long term Financial plan

4. **Review of Status Quo Report and Long-term Financial Plan**

Target: Review of the Status Quo Report and Long-term Financial Plan for the duration of the award, with the first review to be concluded before 30 September 2023 and then every second year thereafter before end of September.

Standard: Present updated written reports based on the updated version of the Tool, which comply with the standards as set in 1.6.3.1.2 and 1.6.3.1.3.

Proof of evidence: Submitted updated Status Quo Report and Long-term Financial Plan

ANNEXURE B

ITEM NO	DESCRIPTION	RATE PER ITEM (INCLUSIVE OF 15% VAT)
1.	Supply, delivery and installation of a Tool	R1 300 000
2.	Review of internally generated LTFP's	R9 600
3.	Submission of Status Quo Report	R121 325
4.	Submission of Long-term Financial Plan	R319 540
ITEM NO	DESCRIPTION	RATE PER ITEM (INCLUSIVE OF 15% VAT)
5.	Review of Status Quo Report and Long-term Financial Plan:	
	2023	R138 000
	2025	R151 800
	2027	R166 980
	2029	R183 678