

Service level Agreement hereby

ENTERED INTO BY

**SETSOTO LOCAL MUNICIPALITY**  
(Hereinafter referred to as the "Municipality")

Herein represented by **STR. RAMAKARANE** duly authorized in his capacity as the  
**Municipal Manager,**

AND

**BATHUSI FINANCIAL CONSULTANTS (PTY) LTD**

(A private company, duly incorporated in accordance with the laws of the Republic of South Africa, with registration number **2019/052452/07**, having its main place of business at 27 Park Road, Willows, Bloemfontein, 9301 herein represented by **LE. PETERSON** in her capacity as **Director**, duly authorized thereto)

(Hereinafter referred as the "Service Provider")

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## 2. PREAMBLE

- 2.1. WHEREAS the Municipality, established in terms of section 12 of the Local Government Municipal Structures Act 32 of 2000, the Municipality has seen it necessary to appoint a Service Provider to deal with preparation of the Annual Financial Statements for the 2020/21 financial year and Service Provider has accepted the appointment.
- 2.2. NOW THEREFORE the parties agree as follows:

## 3. INTERPRETATION

- 3.1. In this agreement, unless the contrary appears from the context, the following words have the meanings stated below:
- 3.1.1. "Acceptance Date" is the date Service Provider accepts the appointment to render the services requested by the Municipality.
- 3.1.2. "Addendum" means the additional terms and conditions which may form part of this agreement at a later stage;
- 3.1.3. "AFSA" means the Arbitration Foundation of Southern Africa;
- 3.1.4. "Agreement" means this agreement and includes all annexures hereto, as well as any and all amendments made from time to time;
- 3.1.5. "Business day" means each day of the week, excluding Saturdays, Sundays and public holidays gazetted in the Republic of South Africa from time to time;
- 3.1.6. "Computer" means an electronic device which can receive information (data) in a particular form and of performing a sequence of operations in accordance with a predetermined but variable set of procedural instructions (program) to produce a result in the form of information or signals.

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- 3.1.7. "Confidential Information" means any technical, regulatory, business, management, commercial and product or service information, which information is marked confidential or is by its nature confidential, including without limitation data processes, specifications, drawings, design, computer software, know-how, contractual arrangements, future plans, reports, business discussions and any material bearing or incorporating such information, disclosed between or on behalf of the Parties either orally or in tangible or visible or machine readable form. Confidential Information will include all consumer data kept by the Municipality.
- 3.1.8. "Force Majeure Events" means any earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labour strike, lockout, boycott, or other similar events beyond the reasonable control of the affected Party;
- 3.1.9. "ICT" means information communication technology;
- 3.1.10. "Intellectual property" means all intellectual property, whether or not registerable, including, but not limited to copyright, patents, proprietary and secrete concepts, methods, techniques, processed, adaptations, ideas, technical specifications and testing methods;
- 3.1.11. "Laws" means all constitutions, statutes, regulations, by-laws, codes, ordinances, decrees, rules, judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings or awards, policies, voluntary restraints, guidelines, directives, compliance notices, abatement notices, agreements with, requirements of, or instructions by any government body; that has the force of law or is binding on either party;
- 3.1.12. "Location" will mean the offices of the Municipality including any satellite offices;
- 3.1.13. "MFMA" means the Municipal Finance Management Act, 56 of 2003;

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- 3.1.14. "mSCOA Regulations" mean the Municipal Regulations on Standard Chart of Accounts, Government Gazette 37577, 22 April 2014 and includes any formal communications issued by National Treasury relating to the Municipal Regulations on Standard Chart of Accounts;
- 3.1.15. "Municipal data" means any and all information and records received from the Municipality, and/or made available to the Service Provider, in connection with the performance of the services;
- 3.1.16. "Municipality" means Setsoto Local Municipality, a Municipality duly established with its principal place of business at 27 Voortrekker Street, Ficksburg, 9730 and its Telephone number: 051 933 9300 and addresses it hereby selects as *domicilia citandi et executandi* for purposes of the Agreement;
- 3.1.17. "Parties" means the Municipality and Service Provider, individually or collectively, as the case may be;
- 3.1.18. "Personnel" means the respective directors, officers, employees, agents, subcontractors, contractors, professional advisors or other representatives of each Party;
- 3.1.19. "Prime Rate" means the prime bank overdraft rate of interest charged from time to time by FNB bank on unsecured overdrawn current accounts of its most favoured corporate customers;
- 3.1.20. "Protection of Personal Information Act" means the Protection of Personal Information Act, 4 of 2013;
- 3.1.21. "Service fees" means the service fees payable by the Municipality to Service Provider for the provision of the services, as set out in this agreement;
- 3.1.22. "Service Provider material" means any product, system, concepts, ideas, methods, methodologies, procedures, policies, processes, know-how, templates and techniques, and intellectual property which Service Provider has created, acquired or otherwise has rights in

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prior to the effective date of this agreement, and may in connection with the performance of the services, employ, provide, modify, create, acquire or otherwise obtain rights in;

3.1.23. "Service Provider" means BATHUSI FINANCIAL CONSULTANTS (PTY) LTD a private company with limited liability, incorporated in terms of the laws of South Africa, with registration number: 2019/052452/07 and with its business address at 27 Park Road, Willows, Bloemfontein, 9301 which addresses it hereby selects as *domicilia citandi et executandi* for purposes of the Agreement;

3.1.24. "Services" will mean the compilation of the Annual Financial Statement and other related services as detailed in here;

3.1.25. "VAT Act" means the Value Added Tax Act, No 89 of 1991.

3.1.26. "VAT" means value added tax as defined in the VAT Act; and

3.2. Headings to the clauses of this agreement and summary are for reference purposes only and are not intended to affect interpretation thereof:

3.2.1. Any reference to singular shall include the plural and vice versa;

3.2.2. natural person includes juristic entities and vice versa; and

3.2.3. any reference to one gender shall include the other.

#### 4. APPOINTMENT

4.1. The Municipality has appointed Service Provider to compile Annual Financial Statements and other related services to be submitted to the Audit Committee [for review] and Auditor General [for statutory auditing].

#### 5. DURATION

5.1. The Parties agree that, irrespective of the signature date of this Agreement, that the Agreement will be effective from the appointment date until the audit

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report has been finalised [and all misstatements on the Annual Financial Statements having been corrected by the Service Provider where applicable].

## 6. OBLIGATIONS OF SERVICE PROVIDER

- 6.1. Accept appointment and complete the appointment in accordance with this Agreement.
- 6.2. Prepare Annual Financial Statements in line with GRAP requirements for submission to the Audit Committee and Auditor General.
- 6.3. Ensure that the Service Provider renders the services as per the proposal submitted to the Municipality by the Service Provider.
- 6.4. Act diligently and use such skill in the execution of its duties and responsibilities as is reasonably expected of members within their profession.
- 6.5. The Service Provider shall utilize suitably qualified and trained personnel to provide the services to the Municipality in terms of this agreement, provided that the Service Provider shall be entitled, in its sole discretion, to allocate personnel resources in accordance with the skills and knowledge required, provided further that any exercise of such discretion shall not negatively impact upon the provision of the services by the Service Provider to the Municipality.
- 6.6. The Service Provider shall carry out and perform all its duties and obligations as set out in this Agreement and it acknowledges that it is not entitled to cede or assign or delegate any of its duties or obligations to any other party nor may the Service Provider alter and/or change its membership, without the prior written consent of the Municipality.
- 6.7. Obtain consent before sharing the municipal data and information with any third party.
- 6.8. Transfer skills and training to designated employees of the Municipality.

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- 6.9. Work closely with such officer/s from other professional disciplines that may be appointed by the Municipality as co-advisors in the management of the services.
- 6.10. Promptly resolve any problem hindering the progress of the appointment.
- 6.11. Service Provider shall submit weekly reports to the Chief Financial Officer and designated Project Manager until submission of the Annual Financial Statements to the Auditor General.
- 6.12. The Service Provider must, on provision of advance, attend all meeting sessions convened by the Municipality to discuss the project managed by the Service Provider.

## 7. OBLIGATIONS OF THE MUNICIPALITY

- 7.1. If it deems fit, ensure that the process for availing Co- Advisors who will work closely with Service Provider is expedited.
- 7.2. Avail all supportive data and information that Service Provider may require to carry out the project successfully.
- 7.3. Be responsible for monitoring Service Provider in the execution of the allocated tasks.
- 7.4. Promptly inform Service Provider of any change of its obligations.
- 7.5. Jointly with Service Provider, be responsible for the resolution of any problem hindering the progress and compliance to deliverables per this Agreement.
- 7.6. If it deems fit, prescribe from time to time, the schedule of work which clearly outlines all the steps to be followed with estimated time frames for the successful implementation.
- 7.7. Give access to Service Provider to all necessary offices and equipment to enable the Service Provider to carry out his/her responsibilities successfully.

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## 8. FEES AND PAYMENT TERMS

- 8.1. Prices charged by the service provider for services performed under the contract shall not vary from the prices quoted of R749 064.00 [inclusive of VAT] by the supplier in the bid document.
- 8.2. The Service Provider is expected to execute the project at the price quoted irrespective of the number of hours utilized. Deviations will be allowed only in cases of variation of scope.
- 8.3. The Municipality shall pay the Service Provider the service fees for the services to be rendered by the Service Provider in terms of this agreement, as set out in proposal / tender submission by the Service Provider to the Municipality.
- 8.4. All amounts payable in terms of this agreement shall be inclusive of VAT unless expressly stated otherwise. The Service Provider shall provide the Municipality with a VAT Invoice in the format, and containing the particulars, required by law.
- 8.5. Each invoice shall be accompanied by a report of the work done as well as a report in terms of the skills transfer. Skills transfer report must be signed by both the Service Provider and the municipal official to whom the skills were transferred.
- 8.6. The Municipality is obliged to make payment of the relevant amounts, subject to the condition that the Municipality receives the applicable invoice from the Service Provider, and that each invoice is supported by a progress report of work done. All reporting shall be addressed to the Municipal Manager and Chief Financial Officer and should be done on a regular basis or as agreed between the parties. The report shall be in writing and should also be forwarded electronically. The reports should comprise of both quantitative and qualitative information relating to the project.

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- 8.7. In line with the Municipal Finance Management Act, the Municipality shall pay all invoices received within 30 days from date of receipt of the invoice and the necessary supporting documentation. Where the Municipality is unable to pay on time, such will be communicated with the Service Provider well on time.
- 8.8. The services shall be performed in accordance with the project plan as set out in this agreement and/or annexures.
- 8.9. Municipality reserves the right to withhold up to 10% [VAT Excluded] of the Service Fee. This amount will be paid at the end of validity period when the Service Provider has fulfilled his/her duties in terms of this Agreement.

#### 9. CHANGE ORDER PROCEDURE/REQUESTING ADDITIONAL SUPPORTING SERVICES

- 9.1. No changes or additions to any this Agreement will be effective or binding on the Parties unless a written change order is signed by authorised representatives of both Parties.
- 9.2. If either Party wants to propose a change in or addition to the Services and/or Supporting Services or other aspects of this Agreement, it may do so by delivering a change order request to the other Party.
- 9.3. The written acceptance by the Municipality of this Service Addendum, by signature of the designated employee on the Service Addendum, will be sufficient proof of the authorisation of the addition and/or amendment required and confirmation that all internal requirements relating to the supply chain management of the Municipality and any requirements of the MFMA have been met.
- 9.4. Service Provider will be entitled to accept that by the signature of the designated employee being appended on the Service Addendum providing for an addition or amendment, all internal processes of the Municipality have

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been complied with and that such signature creates a valid acceptance of the Service Addendum provided by Service Provider.

- 9.5. All changes that have financial implications must be agreed and reduced in writing prior to such being executed by any of the Parties.

## 10. REVIEW OF THE WORK

- 10.1. All the work performed by the Service Provider shall be reviewed in line with the procedure entailed in the evaluation criteria entailed in the proposal / tender submission for quality prior to submission to the Municipality or other external parties.

## 11. DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE

- 11.1. Performance of the services shall be made by the Service Provider in accordance with the scope of work herein and time frames set out in here and/or Annexures.
- 11.2. If at any time during performance of its obligations in terms of this Agreement, the Service Provider or its subcontractor(s) encounter conditions impeding timely performance of the services, the Service Provider shall promptly notify the Municipality in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Service Provider's notice, the Municipality shall evaluate the situation and may at its discretion extend the time frames set out in here and/or Annexures, in which case the extension shall be ratified in writing by the Parties by amendment of this Agreement.

## 12. MANAGEMENT, COMMUNICATION AND REPORTING

- 12.1. The municipality, Service Provider and any other relevant person shall meet as required and shall, *inter alia*, continuously monitor and reassess the service in the best interest of the Municipality.

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- 12.2. Progress reports shall be submitted every week by Friday (or Monday) from the date of appointment until the end of August 2021 (or till submission date) when the Annual Financial Statements are submitted.
- 12.3. Progress report should compare the actual performance against the planned performance as detailed in the project plan to determine if the process is on track to meet the agreed upon time frames [deadlines].
- 12.4. Ad hoc reports may be requested by the Municipal Manager / Chief Financial Officer / Directors at given time during the duration of the project.
- 12.5. The Service Provider must identify a Project Manager that will be duly mandated to represent the Service Provider during the duration of the contract, who will serve as liaison between the Service Provider and the Municipality.
- 12.6. Close-out Report will be required immediately after the Annual Financial Statements are submitted to the AGSA in August 2021 [this report must highlight the risk areas identified and recommendations on how such should be managed during the audit period] and Final Close-out Report must be submitted to the municipality immediately after the Audit Report [audit opinion] has been issued by AGSA at the end of November 2021 or any other period [this should include recommendations on how the municipality can maintain/improve the audit outcome that would have been issued by AGSA].
- 12.7. Matters of mutual interest will be discussed and decided on from time to time at these meetings as well as operational procedures, service levels and performance measurements may be revised here.

### 13. BRIBERY AND CORRUPTION

13.1. The Parties warrant that, regarding this Agreement, it and its affiliates, as well as related parties:

13.1.1. will comply with all applicable anti-bribery and corruption Laws and regulations; and

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13.1.2. will not, directly or indirectly, offer, give or agree to give any person, or solicit, accept or agree to accept from any person gratification (including, without limitation, loans, gifts, donations, status, privilege or anything else of value) in order to act in a dishonest, biased or any other improper manner in carrying out any powers, duties or functions that amounts to the abuse of a position of authority or any other unauthorized or improper inducement of a person to do or not to do anything.

#### 14. BREACH

14.1. Should a Party commit a material breach of this agreement ("the defaulting Party"), which for the avoidance of doubt will include a breach of any warranty set out in this Agreement, and fail to remedy such breach within 14 (fourteen) calendar days of written demand from the other Party, then such other Party may, in addition to any other rights and remedies that it may have:

14.1.1. Claim specific performance; and / or

14.1.2. Terminate this Agreement or the services to which such breach relates, such termination to be effective immediately upon receipt by the defaulting Party of written notice to that effect.

14.2. In the event that any party:

14.2.1. Is placed in provisional or final liquidation, whether compulsory or voluntary; and/or

14.2.2. Is placed under business rescue, whether subject to a provisional or final order; and/or

14.2.3. On or after the effective date commits any act or omission which would render it liable to be liquidated; and/or

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- 14.2.4. On or after the effective date admits in writing that it is unable to pay its debts timeously or at all; and/or
- 14.2.5. Makes an assignment for the benefit of all or substantially all of its creditors; and/or
- 14.2.6. Allows any judgement granted against it to remain unsatisfied for a period of 10 (ten) calendar days after such judgement comes to the attention of any party; and/or
- 14.2.7. Is found guilty (in relation to this agreement or the project to which it relates) of bribery or similar conduct; and/or
- 14.2.8. Enters into an agreement for the composition, extension, or readjustment of substantially all of its obligations, then the other Party may terminate this Agreement forthwith by written notice.

## 15. FORCE MAJEURE

- 15.1. Neither Party will be deemed in default of this Agreement, nor will it hold the other Party responsible for, any termination, interruption or delay in the performance of its obligations (excluding payment obligations) due to Force Majeure Events, provided that the Party relying on this clause gives prompt written notice thereof and takes all steps reasonably necessary to limit the effects of the force majeure event.
- 15.2. If a Force Majeure Event extends for more than 30 days in total, either Party may terminate this Agreement upon written notice.

## 16. DISPUTE RESOLUTION

- 16.1. In the event of any dispute arising out of /or relating to this Agreement concerning the interpretation of terms and conditions of this Agreement or of compliance by either Party with terms and conditions of this Agreement, each of the Parties will appoint a senior representative whose task it will be to meet

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to resolve such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith, to resolve the dispute on mutually agreeable terms.

- 16.2. No formal proceedings may be commenced until either or both designated representatives conclude in good faith, that amicable resolution through continued negotiation of the matter is not likely to occur.
- 16.3. If after fourteen (14) days the Parties have failed to resolve their dispute or difference by such mutual negotiations or consultations, then either the Municipal Council or Service Provider can refer the matter to as provided for in clause 17 (Settlement of Disputes) hereof.

## 17. SETTLEMENT OF DISPUTES

- 17.1. Without detracting from either Party's right to institute action or motion proceedings in the High Court of South Africa or other Court of competent jurisdiction in the Republic of South Africa in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 18 and 19.

## 18. MEDIATION

- 18.1. Subject to the provisions of clause 16, any dispute arising out of or in connection with this Agreement may be referred by the Parties without legal representation to a Mediator in the Republic of South Africa.
- 18.2. The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.
- 18.3. The Mediator shall be selected by agreement between the Parties.
- 18.4. If an agreement cannot be reached upon a particular Mediator within 3 (three) business days after the parties have agreed to refer the matter to mediation,

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then the Provincial Director of the Provincial Legal Practice Council of the Free State shall be requested to nominate the Mediator within 7 (seven) business days after the Parties have failed to agree.

- 18.5. The Mediator shall at his or her sole discretion determine whether the reference him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.
- 18.6. The Parties shall have 7 (seven) Business days within which to finalize their representations. The Mediator shall within 7 (seven) Business days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand and by email.
- 18.7. The opinion so expressed by the Mediator shall be final and binding upon the Parties unless either Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved Party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 19. The expressed opinion of the mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration.
- 18.8. The costs of mediation shall be determined by the Mediator.
- 18.9. Liability for such costs shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

## 19. ARBITRATION

- 19.1. Subject to the provisions of this agreement, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

- 19.2. Arbitration shall be held in Bloemfontein informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that if possible, it shall be held and concluded within 10 (ten) Business days.
- 19.3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the matter in dispute is:
- 19.3.1. primarily a legal matter, a practicing Senior Advocate or Senior Attorney of the Free State Bar;
- 19.3.2. any other matter, an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.
- 19.4. If agreement cannot be reached on whether the question in dispute falls under 19.2(a) or 19.2(b) and/or upon a particular Arbitrator within 3 (three) Business days after the Parties have agreed on arbitration, then the Chairperson of the Free State Bar Council shall be requested to:
- 19.4.1. determine whether the question in dispute falls under 19.2(a) or 19.2(b); and/or
- 19.4.2. nominate the Arbitrator within 7 (seven) Business days after the Parties have failed to agree.
- 19.5. The Arbitrator shall give his or her decision within 5 (five) Business days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or both Parties.
- 19.5.1. The decision of the Arbitrator shall be final and binding and may be made an order of the Free State Provincial Division of the High Court upon the application by any party to the arbitration.

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19.5.2. Notwithstanding the provisions contained in clause 17 of the General Conditions of Contract, disputes between the Parties shall be governed exclusively by, and settled in terms of this Agreement.

## 20. TERMINATION

20.1. The Municipality may terminate this Agreement on 30 days' written notice in the event of:

20.1.1. A change of the legal status of Service Provider, on condition such change has the effect of impairing the functional capacity of Service Provider; or

20.1.2. Service Provider's failure to remedy a breach committed after written notice has been given to rectify such breach by the Municipality in terms of this Agreement.

20.2. The Municipal Council may upon termination, impose the provisions of Regulation 15 (2) of the PPPFA read together with Treasury Practice Note 5 of 2006 and restrict the contractor, its shareholder/s or member/s, director/s or managing member/s from doing business with organs of state for a period determined by the Council.

20.3. Upon termination, Service Provider relinquishes all the rights and obligations it had in terms of this Agreement.

## 21. NO WAIVER

21.1. The failure of either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy in the event of a breach of this Agreement, will not be a waiver by such Party to require strict and punctual compliance with every provision of this Agreement.

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## 22. CESSION

- 22.1. Neither Party shall cede nor transfer any rights or responsibilities in terms of this Agreement without the written consent of the other Party.

## 23. INDULGENCE / NON-PERFORMANCE

- 23.1. The non- performance of any provisions of this Agreement or any indulgence which either Party may grant to the other shall be without prejudice to the rights of the Party granting such indulgence to insist upon the strict compliance by such other Party with the Agreement or to enforce its rights in respect of which such indulgence was granted.

## 24. OWNERSHIP

- 24.1. The copyright of all produced documents and compliance by Service Provider shall be vested in the Municipal Council and may not be reproduced/ distributed or make known to any third party.
- 24.2. All the information, proposals and reports must be regarded as confidential and may not be made available to any unauthorised person, institution, or party.

## 25. RELATIONSHIP BETWEEN THE PARTIES AND GOOD FAITH

- 25.1. Service Provider will serve as an independent contractor and under no circumstances will it be, or be deemed to be, a partner, joint venture or employee of the Municipality in the performance of its duties and responsibilities pursuant to the Agreement.

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25.2. All employees engaged by Service Provider will be Service Provider's employees, servants, or agents, and the entire management, direction, and control of all such employees will be exclusively vested with Service Provider.

25.3. The Parties undertake to act in the utmost good faith in their relationship with each other and they undertake not to do anything nor refrain from doing anything which might prejudice or detract from the rights or interests of the other of them.

## 26. CONFIDENTIALITY; DATA PRIVACY, COLLECTION AND PROTECTION

26.1. Each Party ("the receiving Party") must treat and hold as confidential all information, which it may receive from any other Party ("the disclosing Party") or which becomes known to it concerning the disclosing Party during the currency of this Agreement.

26.2. The receiving Party agrees that in order to protect the proprietary interest of the disclosing Party in its Confidential Information:

26.2.1. It will only make the Confidential Information available to those of its Personnel who are actively involved in the execution of this Agreement and then only on a "need to know" basis;

26.2.2. It will initiate internal security procedures, reasonably acceptable to the disclosing Party, to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

26.2.3. Subject to the right to make the Confidential Information available to their Personnel under this Agreement, it will not at any time, whether during this Agreement or thereafter, either use any Confidential

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Information of the disclosing Party or directly or indirectly disclose any Confidential Information of the disclosing Party to third parties.

- 26.2.4. All written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such the disclosing Party and shall be promptly handed over to the disclosing Party when no longer required for the purposes of this Agreement.
- 26.3. Upon termination or expiry of this Agreement, the Parties will deliver to each other or, at the disclosing Party's option, all originals and copies of Confidential Information in their possession.
- 26.4. The foregoing obligations shall not apply to any information which:
- 26.4.1. Is lawfully in the public domain at time of disclosure;
- 26.4.2. Subsequently becomes part of the public domain by publication or otherwise through no breach by any of the Parties hereto;
- 26.4.3. Subsequently becomes lawfully available to the receiving Party from a source other than the disclosing Party without any restriction on the disclosure of such Confidential Information; or
- 26.4.4. Is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 26.5. The receiving Party hereby indemnifies the disclosing Party against any loss or damage, which the disclosing Party may directly suffer because of a breach of this clause by the receiving Party or its Personnel.

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26.6. The Parties undertake to comply with the Protection of Personal Information Act in exercising its rights and obligations in terms of this Agreement.

26.7. The Municipal data provided by the Municipality to Service Provider remains the property of the Municipality and the Municipality retains all intellectual property rights therein.

## 27. LIMITATION OF LIABILITY

27.1. Each Party's liability to the other for all claims, losses, damages or expenses from any cause whatsoever will be limited to direct damages proven, provided that in the case only of the Municipality's claim against Service Provider for proven direct damages, the amount that the Municipality is entitled to recover will not exceed the total amount of Annual License Fees paid to Service Provider by the Municipality for the period of the Agreement.

27.2. In no event will either Party be liable to the other for any special, incidental, consequential, or any other indirect loss or damage (including but not limited to lost profits or revenues, loss of data). These limitations of liability will apply regardless of the form of action, whether in contract, delict, strict liability, or otherwise and regardless of whether either Party has been advised as to the possibility of such damages and/or losses.

## 28. INTELLECTUAL PROPERTY RIGHTS

28.1. The Municipality acknowledges that the System is not the property of the Municipality and that Service Provider intends that the Municipality will use the System only under the terms of this Agreement.

28.2. Ownership of the intellectual property rights in the various Licensed Programs will remain vested in the proprietors of such Licensed Programs.

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- 28.3. Ownership in the Municipal data shall continue to vest in the Municipality and Service Provider shall not obtain any proprietary rights in the Municipal data.
- 28.4. It is recorded for the sake of completeness that Service Provider shall own all right, title and interest, including but not limited to all rights under all intellectual property laws, in and to the Service Provider Financial System and all Service Provider material.
- 28.5. Service Provider warrants that no aspects of the services or any deliverables provided in terms thereof will infringe any intellectual property or other proprietary right of any third party.
- 28.6. Service Provider may develop software, including spreadsheets, documents, databases, slides and other electronic tools to assist the Municipality with a project. In some cases these aids may be provided to the Municipality upon request. As these tools may be developed specifically for Service Provider's purposes and without consideration of any purpose for which the Municipality might use them, they are made available on an "as is" basis for the Municipality's use only and should not be distributed to or shared with any third party.
- 28.7. Further, Service Provider makes no representations or warranties as to the sufficiency or appropriateness of the software tools for any purpose for which the Municipality may use them. Any software tools developed specifically for the Municipality shall be covered under a separate agreement.

## 29. ELECTRONIC COMMUNICATIONS

- 29.1. During the Agreement Service Provider and the Municipality may from time to time communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or

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unsafe to use. The Parties recognize that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards.

- 29.2. The Parties confirm that each accepts the risks of and authorize electronic communications between them. The Parties each agree to use commercially reasonable procedures to check for the then most known viruses before sending information electronically. The Parties shall each be responsible for protecting their own systems and interests in relation to electronic communications and the Parties shall have no liability to each other on any basis, whether in contract, delict (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between them and their reliance on such information.

### 30. JURISDICTION

- 30.1. All parties to this agreement herewith consent to the jurisdiction of the High Court of South Africa in the event of any action or claims instituted, irrespective of the amount in dispute.

### 31. DOMICILIUM

- 31.1. The Parties choose *domicilium citandi et executandi* for all purposes arising from or pursuant to this agreement as indicated below.
- 31.2. In case of SETSOTO LOCAL MUNICIPALITY: 27 Voortrekker Street; Ficksburg, 9730.
- 31.3. In case of Service Provider: 27 Park Road, Willows, Bloemfontein, 9301.
- 31.4. Parties undertake to notify each in writing of any change of its *domicilium* or any other address which is not a post office.
- 31.5. All notices made by either Party to the other which:

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31.5.1. Are delivered by hand during the normal business hours of the addressee's *domicilium* shall be presumed to have been received by the addressee at the time of delivery.

31.5.2. Urgent correspondences shall be send through electronic mail and reasonable measures shall be taken to confirm receipt.

### 32. WHOLE AGREEMENT

32.1. Parties hereto agree that this Agreement constitute a genuine expression of their intentions and accordingly is the only agreement that exists between the Parties going forward.

32.2. No amendment or variation to this Agreement will be of any force or effect unless reduced to writing on paper and signed by or on behalf of the duly authorised representatives of both Parties in pen. The provisions of the Electronic Communications and Transactions Act, 2002 (25 of 2002) are expressly excluded from this clause.

32.3. Neither Party relies in entering into this Agreement on any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings.

THIS DONE AND SIGNED AT FICKSBURG ON THIS 21 DAY OF SEPTEMBER 2021 FOR AND ON BEHALF OF SETSOTO LOCAL MUNICIPALITY

ISHEPISO RAMAKARANE  
FULL NAMES

  
SIGNATURE

*LPeterson*

*NL*

*KJ*

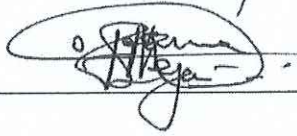
*SP*

*A*

Witness 1: Full name

NICHOLAS LEFA MOLETSANE

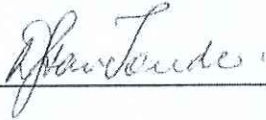
Signature:



Witness 2: Full name

DANIEL JOHANNES VAN TONDER

Signature:



THUS DONE AND SIGNED IN Bloemfontein ON THIS 21st  
DAY OF September 2021 FOR AND ON BEHALF OF BATHUSI FINANCIAL  
CONSULTANTS (PTY) LTD

Leoni Peterson

LPeterson


FULL NAMES

SIGNATURE

Witness 1: Full name

KOMI JOSEPH ABAM

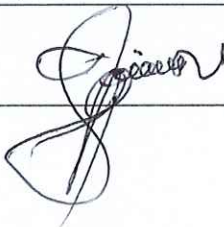
Signature:



Witness 2: Full name

JAN CAREL BARKHUIZEN

Signature:



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