



(DRAFT) SERVICE LEVEL AGREEMENT

TENDER: TENDER8/2/1/UMH557-19/20: PROCUREMENT OF TRANSACTION ADVISOR TO CONDUCT A FEASIBILITY STUDY FOR THE PROPOSED RELOCATION AND REDEVELOPMENT OF THE RICHARDS BAY AIRPORT FOR THE UMHLATHUZE MUNICIPALITY

PO _____

Entered into between

UMHLATHUZE MUNICIPALITY

duly represented herein by **SENAMILE SIWAMUKELE MASONDO** in her capacity as Deputy Municipal Manager: Corporate Services of the uMhlathuze Municipality

(Hereinafter referred to as the COUNCIL)

and

Registration No 0 0 0 0 0 0 0 0 0 0 .

herein represented by _____ (Identity Number _____) in his/her capacity as _____ in terms of a resolution of the Directors/Members dated _____ 20__, attached as Annexure A.

(Hereinafter referred to as the TRANSACTION ADVISOR)

1. INTERPRETATION

- 1.1 The heading of clauses are inserted for ease of reference only and shall not be used for interpretation of this AGREEMENT.
- 1.2 Wherever words importing the singular are used they shall include the plural and wherever the male gender is used, it shall include the female.

2. DEFINITIONS

- 2.1 In this AGREEMENT, unless the context clearly indicates the contrary, the following words, phrases and expressions shall have the respective meanings assigned to each of them as follows:
- 2.1.1 “**Agreement**” means this Service Level Agreement, accepted Tender/Quotation document and any addendums including all annexures hereto.
- 2.1.2 “**Applicable Laws**” means all applicable laws, ordinances, regulations, judgements and orders of any competent Court, including the Act and the Regulations
- 2.1.3 “**Business day**” means any day other than a Saturday, Sunday or South African public holiday;
- 2.1.4 “**Council**” means UMHLATHUZE MUNICIPALITY established in terms of Notice 6766 of 1 October 2000 under section 12(1) read with section 14(2) of the Local Government Municipal Structures Act 117 of 1998
- 2.1.5 “**Council Default**” means a breach by the Council of its obligations under this Agreement, which substantially frustrates or renders it impossible for the Transaction Advisor to perform its obligations under the provisions of this Agreement;
- 2.1.6 “**Day**” means a calendar day;
- 2.1.7 “**Deliverables**” means any information collected, document drawn, programme devised, advice given, recommendation or report made, and in each case delivered by the Transaction Adviser in providing the Services;
- 2.1.8 “**Good Industry Practice**” means in a proper and professional manner, taking into consideration standards, practices, methods and procedures conforming to Applicable Laws and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled, and experienced person engaged in a similar type of undertaking under similar circumstances;
- 2.1.9 “**Month**” means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month;
- 2.1.10 “**National Treasury**” means the National Treasury of the Republic of South Africa;

- 2.1.11 “**Parties**” means the Council and the Transaction Advisor;
- 2.1.12 “**Payment Schedule**” means the schedule of payments attached to this Agreement as Schedule %E+;
- 2.1.13 “**PPP**” means a Public Private Partnership as defined in Regulation 16.1;
- 2.1.14 “**Project**” means the establishment, financing, designing, constructing and operation of a Richards bay Airport Relocation;
- 2.1.15 “**Project Management Committee**” means the committee to be formed under the provisions of clause 23;
- 2.1.16 “**Project Officer**” means that person designated by the Council as project officer for the Project;
- 2.1.17 “**Proposal**” means the Transaction Advisor’s response to the Terms of Reference outlining the Transaction Advisor’s proposal for rendering the Services;
- 2.1.18 “**Regulations**” means the Municipal PPP Regulations to the MFMA as amended from time to time;
- 2.1.19 “**Services**” means the services to be provided by the Transaction Advisor in terms of this Agreement;
- 2.1.20 “**Signature Date**” means the date of signature of this Agreement by the Party signing last;
- 2.1.21 “**Terms of Reference**” means the document titled Terms of Reference issued by the Council under Tender No 8/2/1/UMH557_10/20 which forms and integral part of this Agreement;
- 2.1.22 “**Termination Date**” means date of termination of this Agreement in accordance with its terms;
- 2.1.23 “**Transaction Advisor**” means XYZ (Pty) Ltd
- 2.1.24 “**Transaction Advisor Default**” means default by the Transaction Advisor as contemplated in clause 18.2.
- 2.2 Any reference in this Agreement, (including any of its Annexures and/or attachments, if applicable), to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended or re-enacted from time to time

- 2.3 Words importing the singular shall include the plural, and *vice versa*, words importing the masculine gender shall include feminine and neuter genders, and *vice versa*, and words importing natural persons shall include legal persons, and *vice versa*.
- 2.4 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a party, then notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.
- 2.5 Whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.
- 2.6 Unless otherwise stated, any meaning ascribed to a word, phrase or expression in this agreement shall have the same meaning wherever it appears, thereafter.
- 2.7 The *contra-preferentem* rule shall not be applicable in the interpretation of this agreement. The rule means that the document is interpreted in favour of the party not represented for the drafting of the agreement.
- 2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail
- 2.9 The various documents forming part of this AGREEMENT are to be taken as mutually explanatory except where they are inconsistent or specifically excluded.
- 2.10 In the event of any inconsistency or conflict between this AGREEMENT and the terms and conditions of any other documentation or annexure forming part of this Agreement, then the terms and conditions of this AGREEMENT will prevail.

3. APPOINTMENT

- 3.1 The COUNCIL hereby appoints the TRANSACTION ADVISOR, who hereby accepts such appointment, to deliver the services subject to the terms and conditions of this AGREEMENT as well as the conditions stipulated in the Specifications as contained in the tender document / the Scope of Works/Specifications as contained in **DMS** _____ attached hereto pertaining to Tender/DPR/Deviation _____ .

3.2 The Tender document / quotation document submitted by the TRANSACTION ADVISOR shall form an integral part of this AGREEMENT and shall be equally binding upon the TRANSACTION ADVISOR and COUNCIL.

3.3 The appointment of the TRANSACTION ADVISOR in terms of Clause 3.1 above may not be ceded or assigned to any third party.

4. DURATION

4.1 Notwithstanding the date of signature hereof, this AGREEMENT shall commence/ commenced on _____ and will terminate on _____ unless terminated otherwise, in terms of this AGREEMENT.

4.2 If applicable:

4.2.1 In the event that the specifications in Annexure B provide for penalties and the Transaction Advisor is unable to finalise the works within the specified time frames, the applicable penalties will be as per the specifications in Annexure B, unless agreed otherwise; alternatively

4.2.2 The parties agree that should this AGREEMENT be extended for any reason whatsoever, such extension shall be in writing and shall continue to be of force and effect under the same terms and conditions as stipulated in this agreement, unless the parties agree otherwise in writing.

5. OBLIGATIONS OF THE PARTIES

5.1 Obligations of the Council

The Council undertakes: -

5.1.1 to remunerate the Transaction Advisor for its Services as set out in the Payment Schedule;

5.1.2 to provide all necessary logistical support to the Transaction Advisor so as to enable it to effectively render the Services;

5.1.3 to use its best endeavours to ensure that the Transaction Advisor has timely and adequate access to all information, personnel and documentation available

to the Council that will be required by the Transaction Advisor to render the Services; and

5.1.4 to co-operate with the Transaction Advisor at all times for purposes of facilitating a timeous and efficient delivery of the Services.

5.2. **The Obligations of the Transaction Advisor**

The Transaction Advisor undertakes: -

5.2.1 to perform the Services in accordance with Good Industry Practice;

5.2.2 to devote the necessary time and attention in providing the Deliverables as committed to in the Proposal and shall not engage in any business or activity that will prevent the Transaction Advisor from providing the Services;

5.2.3 at all times, to maintain the highest degree of good faith towards the Council and to ensure that no conflict of interest materialises and that in the event of a conflict of interest arising, to immediately advise the Council of same, upon which advises the Council shall, in its sole and absolute discretion, decide whether to proceed with the Agreement or to terminate it forthwith. Failure by the Transaction Advisor to advise the Council of any conflict of interest shall amount to a material breach of the Agreement and shall entitle the Council to terminate the Agreement forthwith;

5.2.4 to render the Services in accordance with the Deliverables, time frames and specifications as set out in the Terms of Reference, the Proposal and this Agreement, as amended by written agreement of the Parties from time to time;

5.2.5 that all actions and commitments agreed upon or pursuant to the Project Management Committee meetings or agreed to with the Project Officer, will be strictly adhered to;

5.2.6 to maintain independence from other individuals, organisations or Government bodies;

5.2.7 at its own cost, to take out appropriate insurance coverage, to the satisfaction of the Council, against loss arising out of negligence, malpractice or unprofessional conduct by any member of the Transaction Advisor;

5.2.8 to observe neutrality and objectivity in its views and opinions; to respect and observe all Applicable Laws;

5.2.9 to provide the Council with any information and/or reports as requested by the Council in connection with the Services and which information the Transaction Advisor warrants to be accurate and complete;

- 5.2.10 to seek to effect skills transfer to the Council during the performance of the Services anticipated by the Agreement; and
- 5.2.11 to maintain the staff levels as promised and committed to by the Transaction Advisor in its Proposal and that in the event of any dedicated member of the Transaction Advisor becoming incapacitated and unable to carry out his/her duties or whose performance the Council considers to be unsatisfactory in its discretion, to replace, at the Transaction Advisor's cost, such member, subject to the written approval of the Council.

6. **CONFIDENTIALITY**

- 6.1 The Transaction Advisor shall not, during the term of the Agreement and thereafter, without the prior written consent of the Council, disclose any confidential information relating to the Council and the Services, to anyone other than those persons who are connected to the Institution and/or Transaction Advisor and who are required or authorised to have access to such information.
- 6.2 The obligation to maintain the confidentiality of information shall survive the termination of the Agreement, but will not apply to confidential information, which was in the public domain prior to being disclosed by the Transaction Advisor or which has come into the public domain other than as a result of being divulged by the Transaction Advisor.

7. **OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY**

- 7.1 Any information, studies, reports, other material, methodologies, graphic, software or otherwise provided to and produced by the Transaction Advisor in terms of this Agreement (hereinafter "materials"), shall belong to and remain the property of the Council and will not be used by the Transaction Advisor for any purpose other than in accordance with the Agreement, or by written permission of the Institution.
- 7.2 Upon termination of this Agreement for any reason whatsoever, the Transaction Advisor must return to the Council all material in its possession, which belongs to the Council, regardless of whether or not such material were originally supplied by the Institution to the Transaction Advisor.

8. **WARRANTY**

- 8.1 The Transaction Advisor warrants that all corporate approvals and consents required for the incorporation of the Transaction Advisor and all resolutions of the board of directors of the Transaction Advisor authorising the execution and performance of the Agreement have been obtained prior to the Signature Date of the Agreement.

9. PAYMENT FOR PERFORMANCE OF THE SERVICES

9.1 During the term of the Agreement and in consideration for the Services rendered by the Transaction Advisor to the Council, the Council will pay the Transaction Advisor the fixed fee as specified in the Payment Schedule annexed hereto as Schedule “E”.

9.2 The success fee portion of the Transaction Advisor’s compensation will be contingent upon the financial closure (with all formalities completed) of a PPP agreement between the Council and the selected private party, and of receipt by the Council of the close out and relevant case study reports.

9.3 Payment of the mobilisation allowance will be made by the Council within 30 days of the signing of this Agreement. Invoices for further instalments may be submitted to the Council by the Transaction Advisor upon milestones achieved as specified in the Payment Schedule and will be paid within 30 days from the date relevant of receipt of the invoice and shall be made in South African Rands by direct electronic transfer into the South African banking account nominated by the TRANSACTION ADVISOR, with account details as follows:

ACCOUNT HOLDER: _____
BANK: _____
BRANCH: _____
BRANCH CODE: _____
ACCOUNT NUMBER: _____

10. INDEMNITY

10.1 Notwithstanding anything to the contrary contained in this Agreement to the extent permitted by applicable law, both parties hereby indemnify and undertake to hold each other harmless against all claims which may be made against the other party, and against all losses, damages and costs (including costs on an attorney and own client scale) which either party may incur or suffer arising out of or in connection with any negligent and/or wilful act or omission on the part of the other party, its agents, employees, officers or sub-Transaction Advisors or for those for whom such party is legally liable.

11. VARIATION, CANCELLATION, SUSPENSION AND ALTERATION

11.1 No alteration or variation of this agreement shall be of any effect unless it is recorded in writing and signed by all the parties to this agreement.

11.2 No relaxation, which a party may allow the other party at any time with regard to complying with its obligations in terms of this agreement, shall prejudice any of the rights of the first mentioned party under this agreement in any matter whatsoever or be regarded as a waiver of any such rights.

12. SEVERABILITY

12.1 In the event that any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

12.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original intention.

13. WAIVER

No waiver by a Party of any right under the Agreement shall be effective unless reduced to writing and signed by or on behalf of both Parties.

14. SUPERSESION

This AGREEMENT together with all its annexures and its attachments shall supersede all prior arrangements, undertakings, understandings and agreements between the parties, whether tacit, oral, written or otherwise.

15. FORCE MAJEURE

15.1 Neither party shall be liable for any failure to fulfill its obligations under this AGREEMENT if and to the extent that such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, wind, fire, earthquake, war or other civil disturbance, provided that the existence of such cause has been drawn to the attention of the other Party within a reasonable time of the occurrence of such cause.

15.2 Should either party be unable to fulfill a material part of its obligations under this agreement for a period in excess of 30 (thirty) days due to circumstances beyond its control, either party may, in its sole discretion, cancel this AGREEMENT forthwith by providing reasonable written notice.

16. ENTIRE CONTRACT

This AGREEMENT constitutes the entire agreement between the parties and no other conditions, stipulations of terms whatsoever, other than such as are included herein, shall bind the parties unless reduced to writing and signed by the parties.

17. VALIDITY

If any provision of this AGREEMENT is found or held to be invalid or unenforceable, the validity of the other provisions hereof will not be affected thereby and the parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same object as the invalid provision, to adopt such means by way of variation of this AGREEMENT.

18. BREACH

18.1 On the occurrence of the Council's breach, or within a reasonable time after the Transaction Advisor may serve notice on the Council of the occurrence (and specifying details) of such council breach and the council shall be given 10 (TEN) days to rectify the relevant breach.

18.2 Transaction Advisor Default means any of the following events or circumstances:

18.2.1 The Transaction Advisor ceasing to carry on business;

18.2.2 A resolution being passed or an order of a court being made for the administration or the judicial management, winding-up, liquidation or dissolution of the Transaction Advisor;

18.2.3 The Transaction Advisor committing a breach of any of its material obligations under this Agreement;

18.2.4 The Transaction Advisor ceasing to provide all or a substantial part of the Services in accordance with the Agreement;

18.2.5 The Transaction Advisor providing Services that are in the Institution's reasonable opinion, not Good Industry Practice;

18.2.6 The Transaction Advisor failing to maintain any required insurance in terms of Clause 5.2.7.

18.3 REMEDIES IN THE CASE OF DEATH, SEQUESTRATION, LIQUIDATION OR JUDICIAL MANAGEMENT AND/OR NON-COMPLIANCE WITH OBLIGATIONS BY THE JOINT VENTURE/ CONSORTIUM

18.3.1 In the event of the death of a Member/ Director/Partner of the Joint Venture or the provisional or final sequestration of his/her/their estate or of his/her/their cession or transfer of a contract without the approval of the Bid Adjudication Committee of uMhlathuze Municipality or of the surrender of his/her/their estate or of his/her/their reaching a compromise with his/her/their creditors or of the provisional or final liquidation of a tenderer's company/closed corporation/partnership or the placing of its affairs under judicial management, uMhlathuze Municipality may, without prejudice to any other rights it may have:

18.3.1.1 cancel the contract and accept any of the tenders which were submitted originally with that of the Joint Venture or any offer subsequently received to complete the contract, if applicable. In such a case the estate of the Joint Venture or any of its individual members/Directors/Partners shall not be relieved of liability for any claim which has arisen or may arise against the Joint Venture in respect of services not rendered by the Joint Venture, under the contract.

18.4 In the event of non-compliance by the Joint Venture of any of its obligations in terms of this tender and/or in the event of the sequestration/liquidation of either the Close Corporation, Company or Partnership respectively or any of its members, directors or partners, Council retains the right to institute legal proceedings against the Close Corporations and/or, the Company and/or the Partnership and/or their individual members and/or directors and/or partners jointly and severally, the one to pay the other/s to be absolved of any such obligation.

19. TERMINATION

19.1 The Institution reserves the right to terminate this Agreement or temporarily defer the provisioning of the Services, or any part thereof, after any phase, should the Institution in its sole and absolute discretion, decide not to proceed with the Services, in which event, the Transaction Advisor will be remunerated for that portion of Services rendered up to a maximum amount of not more than the total fee indicated by the Transaction Advisor in the Proposal for the appropriate phase of the Services during which the Agreement is terminated.

- 19.2 Failure on the part of the Council to comply with clause 18.1 will vest the Transaction Advisor with the right to serve the notice on the council terminating the agreement with immediate effect.
- 19.3 On the occurrence of a Transaction Advisor Default, or within a reasonable time after the Institution becomes aware of the same, and while the same is subsisting, the Institution may: -
- 19.3.1 In the case of the transaction advisor default referred to in clauses 18.2.1. to 18.2.3, terminate the agreement in its entirety by notice in writing with immediate effect;
- 19.3.2 in the case of the Transaction Advisor Default referred to in Clauses 18.2.4. to 18.2.6, serve a notice of default on the Transaction Advisor requiring the Transaction Advisor to remedy the Transaction Advisor Default within 10 (ten) Business Days;
- 19.3.3 Failure by the Transaction Advisor to remedy the Transaction Advisor's Default within the specified time as stipulated in clause 19.3.2, shall entitle the Institution to terminate this Agreement.
- 19.4 Either Party may, without prejudice to its rights in terms of the Agreement or at Law immediately terminate the Agreement, in the event that:
- 19.4.1 the other party or any of its staff are found guilty of having been involved in any fraudulent activity in relation to this Agreement;
- 19.4.2 during the currency of this Agreement, there is a change in Government policy that affects the Council's or the Transaction Advisor's ability to perform their respective obligations in terms of this Agreement;
- 19.4.3 if the Transaction Advisor does anything that may be regarded as being contrary to the public or community mores, or which brings the reputation of the Council in disrepute, and as a consequence, the Council believes that its continued association with the Transaction Advisor will be prejudicial or otherwise detrimental to its image as an Organ of State;
- 19.4.4 if the Transaction Advisor, being a partnership, company or other corporate entity, undergoes a change in its structure by redirecting its affairs, whether by ownership or shares, membership, change in its board of directors, or otherwise, which in the reasonable opinion of the Council, limits or affects the capacity of the Service Provider to provide the Services or to carry out any obligation, as envisaged in terms of this Agreement;
- 19.4.5 if the Transaction Advisor, being a Partnership, Company or other Corporate Entity, is liquidated. Either provisionally or finally or takes such steps, or is placed under judicial management, either voluntarily or by Order of Court, or if a Business Rescue Practitioner

is appointed to manage the affairs of the Transaction Advisor or if the Transaction Advisor enters into a compromise with any of its creditors.

19.4.6 commits any act which would be an act of insolvency as defined in the Insolvency Act, 1936 (as amended) if committed by a natural person provided that the aggrieved party acting in good faith considers such event to be detrimental to it for sound business reasons; or

19.4.7 takes steps to de-register itself or is de-registered.

20. DISPUTE RESOLUTION

20.1 If any dispute arises between the Parties to this AGREEMENT at any time with regards to:

- a) any matter arising out of or relating to this AGREEMENT;
- b) any interpretation of this AGREEMENT;
- c) the termination of this AGREEMENT or any matter arising out of the termination of this AGREEMENT;
- d) a claim for rectification of this AGREEMENT,

such dispute shall be declared by written notice delivered by one party to the other within 30 (thirty) days from date on which the dispute was declared, where after they shall endeavor to resolve their differences by a process of negotiation.

20.2 If the parties are not able to reach agreement within 30 days of delivery of the notice referred to in clause 15.1 then either party shall be entitled to approach a Court of Law for the appropriate relief.

20.3 Notwithstanding the above either of the parties shall be entitled to approach a court of law for urgent interim relief pending resolution of the dispute.

21. JURISDICTION

The parties agree to the jurisdiction of the Magistrates Court for any litigation in connection with or pursuant to this Agreement. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to the provisions of the Magistrates Court Act No 32 of 1944 (as amended), provided that the parties shall have the right, to institute proceedings in the High Court of South Africa

(Durban Coast and Local Division) (or any successors to such court) and irrevocably submit to the exclusive jurisdiction of such court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's Court.

22. GENERAL

- 22.1 All reports, accounts and documentation are to be presented to the uMhlathuze Municipality in hard copy as well as electronic format compatible with the software currently in use by the uMhlathuze Municipality (currently MS Excel, MSWord) on a monthly basis and/or periodically as determined by the user department.
- 22.2 Should the Municipality change its software, the successful bidder must accordingly submit such reports and documentation in the new format. Any costs associated with such changes on the side of the Transaction Advisor shall be borne by the Transaction Advisor.

23. PROJECT MANAGEMENT COMMITTEE

- 23.1 The Parties shall, as soon as reasonably possible after signature of the Agreement, but in any event within 30 days, form a Project Management Committee that will be responsible for the management of the Agreement so as to ensure the smooth and satisfactory delivery by the Transaction Advisor to the Institution of the Services.
- 23.2 The Project Management Committee shall be composed of the following:-
- 23.2.1 the Project Officer who shall act as manager on behalf of the Institution;
 - 23.2.2 such other additional members as appointed by the Institution;
 - 23.2.3 a representative appointed by the Transaction Advisor, who shall have the authority to bind the Transaction Advisor; and
 - 23.2.4 such other members of the Transaction Advisor team as appointed by the Transaction Advisor.
- 23.3 The functions of the Project Management Committee shall be as follows:-
- 23.3.1 to facilitate communications between the Parties and access by the Transaction Advisor to all information in possession of or under the control of the Institution which is or may be relevant to the performance by the Transaction Advisor of the Services;
 - 23.3.2 to review the progress on the implementation of the Agreement;
 - 23.3.3 to manage and facilitate the resolving of potential disputes;
 - 23.3.4 to monitor and maintain alignment with policy and strategy of the Institution;
 - 23.3.5 to assist the Transaction Advisor to achieve the Agreement objectives within the agreed scope, time cost and quality;

23.3.6 to provide advice and consent on the scope of any amendments or variations to this Agreement;

23.3.7 to facilitate the obtaining of all necessary approvals from the Institution and from National Treasury to implement the provisions of this Agreement; and

23.3.8 to provide feedback to the relevant stakeholders

23.4 The Project Management Committee shall determine an appropriate set of meetings to be held and the frequency thereof.

24. NOTICES AND ADDRESSES FOR SERVICE (DOMICILIUM ADDRESS)

24.1 Unless otherwise specified any notice or communication in terms of this AGREEMENT:

24.1.1 must be in writing to be effective;

24.1.2 must be sent by hand, telefax or prepaid registered post to the following address / telefax number or electronic mail address, which physical addresses the parties select as their respective domicilium citandi et executandi:

COUNCIL:

Postal address : Office of the Municipal Manager
City of uMhlathuze
Private Bag X1004
RICHARDS BAY
3900

Telefax : (035) 9075444/5/6/7

Electronic Mail: creg@umhlathuze.gov.za
(for ordinary notices)

Physical address : Office of the Municipal Manager
City of uMhlathuze
Civic Centre
5 Mark Strasse
Central Business District
RICHARDS BAY
(for Court processes)

THE TRANSACTION ADVISOR

Postal address : P O Box

(for ordinary notices)

Telephone :

Fax :

e-mail :

Physical address :

(for Court processes)

24.2 Either party may change its address/telefax number or email address to any other address/telefax number or email address within South Africa, provided that at least one of the addresses is to be a physical address for the service of process documents. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.

24.3 If the address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the domicilium citandi et executandi of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new domicilium citandi et executandi.

24.4 Any notice or communication shall:

24.4.1 if delivered by hand during business hours at the premises selected by the addressee for the delivery of notices to the person apparently in charge, be deemed to have been received on the date of delivery;

24.4.2 if sent by prepaid registered post to the selected address be deemed to have been received 7 (seven) days after posting; and

24.4.3 if telefaxed or sent by electronic mail to the selected number or email address, be deemed to have been received on the first business day following the date of transmission / submission.

24.5 Any written notice or communication which has actually been received by a party from the other party shall be regarded as adequate written notice notwithstanding that it was not sent or delivered at the party's chosen *domicilium citandi et executandi* in the manner or to the address / telefax number or electronic mail address provided for above.

24.6 Notwithstanding the above and although the parties may correspond via electronic mail for operational purposes, no valid notice given under, or amendment to the terms of this AGREEMENT may be given or concluded by way of a data message as defined in the Electronic Communications Act, 25 of 2002.

25. SUB-CONTRACTING

25.1 The Transaction Advisor shall not, without the prior written consent of the Institution (which shall not be unreasonably withheld) sub-contract or delegate any of the Services to any Parties other than those listed as members of the Transaction Advisor's team as contained in the Proposal.

25.2 The Transaction Advisor shall not be relieved of any obligations, responsibility or liability under the Agreement by the appointment of any sub-contractor to carry out any part of the Services. As between the Transaction Advisor and the Institution, the Transaction Advisor shall be responsible for the payment, performance, act, defaults, omissions, breaches and negligence of all sub-contractors. All reference in the Agreement to any performance payment, act, default, omission, breach or negligence of the Transaction Advisor shall be deemed to include any or the same by a sub-contractor.

26. LAW GOVERNING AGREEMENTS AND LANGUAGE

The Agreement shall be governed by the laws of the Republic of South Africa, and its language shall be English.

27. COUNTERPARTS

The Agreement shall be capable of execution in counterparts, all of which when read together shall constitute one and the same document.

28. AUTHORITY

Each Party warrants to the other Party that it has power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its members/partners/directors/trustees/Council (as may be applicable) and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.

THUS DONE AND SIGNED AT RICHARDS BAY ON THIS DAY OF

2019

AS WITNESSES:

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**S S MASONDO: DEPUTY MUNICIPAL
MANAGER: CORPORATE SERVICES**
for and on behalf of the COUNCIL

THUS DONE AND SIGNED AT _____ ON THIS DAY OF 2019

AS WITNESSES:

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TRANSACTION ADVISOR

