

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL
KZN 435

Service Level Agreement

ITEM NO	DETAILS REQUIRED	DETAILS PROVIDED
1	Project Name	Advertising Agent
2	The Service Provider/Contractor	Ayanda Mbanga Communications (PTY) Ltd
3	Contract Number	812/1/297
4	Contractor's Active Postal Address	Suite 207, 2 nd Floor , FNB House , 151 Musgrave Road , Durban
5	Commencement Date	11 JUNE 2021
	Termination Date	10 JUNE 2022
6	.1 Contractor's Active Fax No.	031 202 2912
	.2 Telephone Numbers	031202 2916
	.3 Contractor's E-mail Address	Irene.gilbert@amcomms.co.za
7	Contract Amount	Accepted R10 396, 00 (inclu.Vat) – Rates

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8	Annexures	(a) Tender Document ; (b) Appointment Letter; (c) Acceptance Letter;
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Approval

(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement.) Please note however that the document to be signed will read along together with the document that will be marked "Annexure A" - Tender Document (the document marked Annexure A "shall there in have all the obligations, schedules and other documents that is relevant for the service provider to render service successfully).

In case where the signed documents contradicts any of the terms to this agreement the proposal document shall be then be used as a guiding document to this agreement

Approvers	Role	Signed	Approval Date
Ayanda Mbanga Communication (Pty) Ltd	Service Provider		
UMZIMKHULU LOCAL MUNICIPALITY	Client		

Agreement Overview

This Agreement represents a Service Level Agreement ("SLA" or "Agreement") between Ayanda Mbanga Communications (Pty) Ltd herein represented by Ms Irene Gibert in her capacity as the Regional Manager of the company. and UMzimkhulu Local Municipality represented by Mr. ZS Sikhosana in his capacity as the municipal Manager.

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This Agreement remains valid until superseded by a revised agreement mutually endorsed by the stakeholders.

This Agreement outlines the parameters of handling advertisement of vacancies, tender and other articles in the print media. The service provider responded to the advert / invitation to a tender no ULM-BTO 002 /21 dated 30th March 2021, for the provision of advertising services (advertising Agent) , and the closing date for the advert was on the 16 April 2021

UMzimkhulu Local Municipality thereto appointed Ayanda Mbanga (PTY) Ltd, Wherefore Ayanda Mbanga (Pty) Ltd accepted the appointment by the UMzimkhulu Local Municipality and the duration of the contract shall be 12 Months starting from the _____ 2021 and ending on the _____ 2022

1. Goals & Objectives

The purpose of this Agreement is for the provision of handling advertisement of vacancies, tender and other articles in the print media for the municipality

All the objectives are clearly defined in the schedule marked "Annexure A" (Terms of Reference) wherein service provider will provide and handle advertisement of vacancies, tender and other articles in the print media as it is stated in terms of the tender document

The municipality shall advise the Service Provider in writing whenever there is change that is to be added or to be taken out of this agreement.

It is therefore agreed between the parties that all product offered items shall comply with the latest relevant code of South African National, Provincial Regulations and Legislations

2. Stakeholders

The following service provider, Ayanda Mbanga (Pty) Ltd and the Customer(s)/ Client Umzimkhulu Local Municipality will be used as the basis of the Agreement and represent the primary stakeholders associated with this SLA

Service provider ; having its head office at Suite 207, 2nd Floor , FNB House , 151 Musgrave Road , Durban and their
Telephone 031 202 2916

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J.G.

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Fax number 031 202 2912

Customer(s): UMzimkhulu Local Municipality ("Client")

Having its office at 169 Main Street, Private Bag 53, UMzimkhulu, 3297

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3. Periodic Review

This Agreement is valid from the Effective Date outlined herein and is valid until further notice (This agreement is valid from the effective date till the time when the intended objectives are met / or This Agreement should be reviewed any time whilst the service provider is still rendering the services to the client; however, in lieu of a review during any period specified, the current Agreement will remain in effect.

The end user department manager ("Document Owner") is responsible for facilitating regular reviews of this document. Contents of this document may be amended as required, provided mutual agreement is obtained from the primary stakeholders and communicated to all affected parties.

The Document Owner will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

The service provider must report and submit monthly progress report covering all aspects of the project in detail to the end user department manager.

The report must be submitted to the manager not later than 5 days before the end of each month.

All the pro forma that may be given to the service provider must be used as the basis of submitting these reports

ADVERTISING SERVICES AGREEMENT BETWEEN

AYANDA MBANGA COMMUNICATIONS (PTY) LIMITED

Registration Number: 1980/009032/07

(Hereinafter referred to as "the Service Provider")

169 Main Street
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AND

UMzimkhulu Municipality

Registration Number: 4300156819

(Hereinafter referred to as "(Client)")

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms/expressions shall bear the meanings assigned to them below:

- 1.1.1 "Affiliate" means any legal entity of the (Client) Group;
- 1.1.2 "Agreement" means this written document together with its annexure;
- 1.1.3 "Brief" means the advertising brief; that is a request by (Client) for the Service Provider to render the Services;
- 1.1.4 "Candidate" means an applicant in respect of a Vacancy;
- 1.1.5 "Day" means a calendar day;
- 1.1.6 "In Writing" included e-mail correspondence;
- 1.1.7 "Notice" shall mean a written document;
- 1.1.8 "(Client) Representative" means an employee of (Client) who is a manager or an authorised representative who engages the Services of the Service Provider;
- 1.1.9 "Parties" means (Client) and the Service Provider;

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- 1.1.10 "Services" means the recruitment, legal notices, tender and other forms of advertising services to be rendered by the Service Provider;
- 1.1.11 "Vacancy" means the job or position available and that (Client) is recruiting for.
- 1.2 Clause headings are used for the purpose of convenience only and shall not be taken into account in the interpretation of the agreement.
- 1.3 Where the singular form of a word is used it shall be deemed to include the plural and vice versa.
- 1.4 Any terms and conditions of this Agreement have been negotiated; the contra proferentem rule shall not apply in the interpretation of the Agreement.
- 1.5 Any provision in the definition and interpretation clause conferring rights or imposing obligations on any Party shall be regarded as a substantive provision of the Agreement, regardless of the fact that it only appears in the said clause.
2. ENGAGEMENT
- 2.1 (Client) may from time to time require the Services and may engage the Service Provider to perform such Services by concluding a Brief Schedule with the Service Provider.
- 2.2 The Service Provider is an advertising agency, which offers recruitment advertising services, legal notices, tender and other forms of advertising and wishes to render the Services to (Client).
- 2.3 This Agreement records the terms and conditions on which the Service Provider will render the Services to (Client) and shall apply to all the Services that the Service Provider provides to (Client).

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3. AFFILIATES

- 3.1 By concluding a brief Schedule with the Service Provider the Affiliate acknowledges and agrees to the terms and conditions of this Agreement and subject to the provisions of clause 3.2 to this Agreement, as if it were a signatory to this Agreement in its own right.
- 3.2 An Affiliate shall be bound by and shall be entitled to exercise all the rights contained in this Agreement, only to the extent that it applies to Brief Schedules concluded by the Affiliate.

4. REFERENCE TO (CLIENT)

For the purpose of the contractual relationship, which comes into being between the Service Provider and Affiliates on the signing of Brief Schedules, all references to (Client) in this Agreement shall be deemed to be a reference to Affiliates.

5. PRECEDENCE

Each Brief Schedule signed by the Parties shall constitute a separate agreement between the Parties and shall incorporate the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and the provisions contained in the Brief Schedule, the last-mentioned provisions shall prevail.

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6. DURATION

This agreement shall:

- 6.1 Commence on the Effective Date; and
- 6.2 Subject to the provisions of clause 17 and 18; endure for a period of 12 months (1 year)

7. SERVICES

If (Client) wishes to engage the Service Provider to provide the Services:

- 7.1 A (Client) Representative should contact the Service Provider's liaison person with a Brief.
- 7.2 The Service Provider shall acknowledge receipt of the Brief in accordance with point 8 of this Agreement.
- 7.3 If the Business Unit or Affiliate has not previously briefed the Service Provider, the particular Business and / or Affiliate will be required to complete a credit application form to register with the Service Provider as a user.
- 7.4 In the case of a recruitment advertisement, after the account has been confirmed, the (Client) Representative and the Service Provider's Liaison Person will meet or arrange time to discuss which external media would be best suited to attract the right Candidate for that specific Vacancy.

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- 7.5 The Service Provider shall proceed to draw up the advertisement in accordance with (Client)'s house-style format as approved by (Client).
- 7.6 The Service Provider shall submit a first proof of the advertisement together with a quotation within the timeframe agreed on in the Brief Schedule.
- 7.6.1 Price of the advertisement (including Value Added Tax);
- 7.6.2 measurements and other features of the advertisement;
- 7.6.3 date of placement of the advertisement;
- 7.6.4 publication in which the advertisement is to be placed.
- 7.7 Once the (Client) Representative has accepted the quotation the Parties must ensure that a Brief Schedule is completed and signed and an appropriately authorised purchase order form submitted where applicable.
- 7.8 The Service Provider shall submit a first proof of the advertisement for the approval of (Client) in accordance with the Service Levels set out in point 8 of this Agreement.
- 7.9 (Client) shall communicate any required amendments to the advertisement, within an agreed timeframe after receipt of the first proof. If (Client) is satisfied with the proposed advertisement, the (Client) Representative must sign the advertisement off and send it to the Service Provider. If (Client) confirms in writing that it does not require any changes, this will be regarded as final approval.
- 7.10 The Service Provider shall, within 1 (one) Business Day after receipt of the required amendments, amend the advertisement and resubmit the final proof to (Client) for approval. (Client) shall communicate its final approval in writing that it does not require any changes. This will be regarded as final approval.

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- 7.11 Provided that (Client) has met each time period specified above, the Service Provider shall ensure that the advertisement is published on the date originally specified in the quotation.

The advertising services that the Service Provider will provide includes the following:

- 7.12 Assimilation / assessment of the Brief
- 7.13 Create, design, prepare and submit an advertising proposal to (Client)
- 7.14 Advise on the best media platform for the placing of the advertisements
- 7.15 Copywriting
- 7.16 English, Xhosa and Afrikaans translations
- 7.17 Local / Overseas media searches and advice
- 7.18 Order and negotiate advertising space at all times endeavoring to secure the most efficient and advantageous rates available to (Client)
- 7.19 Transmission of final advertising material to the media
- 7.20 Prepare and submit quotations of advertising costs and expenses for approval by (Client)
- 7.21 Reconcile media invoices and provide proof of advertisements ("tear sheets")
- 7.22 Ensure brand continuity of (Client) during advertising

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- 7.23 Perform such other related services as (Client) may reasonably request from time to time, such as, but not limited to response management and market research.

8. SERVICE LEVELS AND STANDARDS

The Service Provider warrants that the Services shall be of a professional standard and that the Services shall be rendered with due care, skill and diligence. Without detracting from the generality of this obligation, the Service Provider undertakes to meet the Service Levels set out below.

8.1 ADVERTISING

DESCRIPTION	TIMEFRAME
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Acknowledgement of Brief	1 (one) Business Day after receipt of Brief
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First proof of advertisement	1 (one) Business Day after Acknowledgement of Brief
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8.2 RESPONSE MANAGEMENT (Where required)

DESCRIPTION	TIMEFRAME
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CV short list	3 – 5 Business Days
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Conduct reference checks on short-listed candidates	5 – 10 Business Days
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9. FEES AND PAYMENT CONDITIONS

In consideration for the proper rendering of the Services by the Service Provider, (Client) shall remunerate the Service Provider as set out below:

- 9.1 (Client) shall not remunerate the Service Provider for the Services.

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J.H.

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- 9.2 Pricing schedule shall be used as the basis of fees to be claimed by the services provider .
- 9.3 The Service Provider shall, however, as agent of the media, collect the publication cost of the advertisement on behalf of the media and shall thus invoice (Client) for such cost. In the case of a recruitment advertisement, each vacancy advertised shall be invoiced separately. Each invoice per advertisement shall reflect the following:
- 9.3.1 date on which advertisement was published;
 - 9.3.2 publication in which the advertisement was placed;
 - 9.3.3 in the case of a recruitment advertisement – the job title advertised and
 - 9.3.4 whether the Vacancy was advertised as part of a composite advertisement or as a standalone (single format) advertisement;
 - 9.3.5 cost of publication of advertisement,
 - 9.3.6 (Client) Business Unit / Affiliate and name of (Client) Representative for whom advertisement was placed;
 - 9.3.7 cost-centre of Business Unit / line manager, per title advertised.
- 9.4 The Service Provider will not be compensated on a commission basis for response management where this service is required. Where the Service Provider renders response management services, the Service Provider will charge the tariff as agreed upfront.
- 9.5 The Service Provider shall submit an original invoice to the (Client) Representative once the advertisement has been placed.
- 9.6 Save for any amounts disputed by (Client) in accordance with the provisions of clause 8, the amount/s stated in each invoice shall be due and payable within 30 (thirty) days of the date of receipt of such invoice by (Client).
- 9.7 (Client) shall make payment to the Service Provider electronically; into the bank account provided by the Service Provider.

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J.G.

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- 9.8 Apart from the publication costs, any costs of and incidental to the Services, of whatsoever nature and howsoever arising, shall be agreed upon between the Parties in writing, in advance and shall not be paid by (Client) to the Service Provider in the absence of such agreement.
- 9.9 Should (Client) dispute any amount appearing on an invoice submitted to (Client) pursuant to this Agreement ("the affected invoice"), (Client) shall give the Service Provider notice, of such dispute, specifying:
- 9.9.1 the affected invoice;
 - 9.9.2 the specific amount in dispute;
 - 9.9.3 the reasons or grounds for such dispute.
- 9.10 Any amount so disputed shall not be regarded as "due and payable" as contemplated herein above and if the Parties are unable to resolve such dispute, the matter shall be referred to arbitration in terms of clause 19.
- 9.11 If Brief Schedules are terminated as envisaged in clause 19.2.1, (Client) shall be liable for a cancellation fee, which shall be 50% (fifty percent) of the commission due to the Service Provider.

10. CONFIDENTIALITY

The Service Provider shall in the course of its dealings with (Client) gain access to information of a sensitive, confidential and/or proprietary nature. The Service Provider undertakes not to divulge this information to any party without the express agreement in writing of (Client), and further undertakes to sign a confidentiality agreement as per (Client) company regulations.

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J.G.

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3297



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11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All intellectual property rights arising from the Service (including but not limited to advertising prepared or published) shall vest in (Client).
- 11.2 The Service Provider undertakes to use (Client) trademarks strictly in accordance with (Client) requirements. In this regards the Service Provider undertakes not to use the registered trademark of any third party, competitor or otherwise, in (Client) advertising without prior consultation and written agreement of (Client).

12. GENERAL OBLIGATIONS OF THE AGENCY

Notwithstanding any other obligations of the Service Provider contained elsewhere in this Agreement, the Service Provider shall:

- 12.1 allocate a dedicated Advertising Consultant to (Client). As at the Effective Date, the Service Provider's Liaison Person shall be the person identified as such in Annexure A;
- 12.2 build the (Client) brand to create a suitable climate for future business;
- 12.3 reduce risk factors associated with recruitment and other advertising;
- 12.4 provide media recommendations to (Client), in order to ensure that (Client) reaches its target market;
- 12.5 ensure that brand consistency and uniformity is maintained with the placement of each advertisement;

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- 12.6 negotiate the best possible price and position on the page with the media, to ensure cost-effective advertising;
- 12.7 inform (Client) of all publisher's special discounts and package prices for multiple media within the same group;
- 12.8 ensure that the wording of all the advertisements are compliant with all legal and statutory requirements and are fair, non-offensive, non-discriminatory, non-racial and reasonable;
- 12.9 comply with all reasonable instructions received from (Client), pertaining to the rendering of the Services;
- 12.10 ensure that all verbal instructions received from (Client) are confirmed in writing, before executing the instructions;
- 12.11 stay abreast of recruitment advertising and response management trends;
- 12.12 notify (Client) of any changes that adversely affect the Service Provider's Black Economic Empowerment status;
- 12.13 not refer to (Client) in any of its communications to third parties or in any of its marketing or promotional material or on its website, without the prior written approval of (Client).

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13. AUDIT

- 13.1 The Service Provider shall allow (Client) access to its premises upon 24 (twenty four) hours notice in order that (Client) may perform an audit of the Service Provider's compliance with the Agreement.
- 13.2 In order to facilitate the audit, the Service Provider shall make available all records, books of account and other documents pertaining to the Services performed by the Service Provider.

14. COMMUNICATION

- 14.1 The Service Provider shall direct all communication in respect of the Services to the specific (Client) Representative (or his/her representative) dealing with the Brief and who engaged the Service Provider to render the Services.
- 14.2 Communication relating to the Agreement in general shall be directed to the person referred to as (Client) Liaison Officer in Annexure A.

15. INDEMNITY

The Service Provider hereby indemnifies (Client) against any liability (whether based in contract, delict or any other cause), which (Client) or the Service Provider may incur towards any third party, arising from the noncompliance by the Service Provider with its obligations in terms of this Agreement.

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J.G.

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Private Bag 53
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16. WARRANTIES

The Service Provider warrants that it is familiar with and undertakes to comply with all legislation, and other laws pertaining to the industry, which applies and which the Service Provider will be rendering in terms of this Agreement.

17. BREACH

17.1 In the event of either Parties:

- 17.1.1 committing a breach of any of the material conditions of this Agreement and/or Brief Schedule and failing to remedy such breach within 5 (five) Business Days of receipt of Notice from the other Party requesting it to remedy such breach; or
 - 17.1.2 becoming insolvent, compromising or attempting to compromise with any of its creditors, or being placed under provisional or final liquidation or under judicial management; or
 - 17.1.3 committing an act which, if the Parties had been individuals would have constituted an act of insolvency in terms of the Insolvency Act 24 of 1936;
then the other Party shall be entitled to cancel this Agreement and/or the Brief Schedule forthwith and claim such damages or losses as it may have suffered.
- 17.2 The provision of this clause 17 shall not affect or prejudice any other rights/remedies, which the Parties may have by law.
- 17.3 The cancellation of this Agreement in terms of clause 18.1 shall not affect the validity of any Brief Schedule signed by the parties prior to such cancellation. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

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18. TERMINATION OF AGREEMENT

- 18.1 Either one of the Parties may terminate this Agreement at any time by merely giving at least 90 (ninety) Days Notice of such termination to the other Party. However if there is non compliance especial failure to remedy breach as in terms of clause 17 either party may terminate without giving any notices
- 18.2 The termination of this Agreement in terms of clause 18.1 shall not affect the validity of any Brief Schedule signed by the Parties prior to such termination. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

19. TERMINATION OF ASSIGNMENT

- 19.1 Either one of the Parties may terminate a Brief Schedule at any time.
- 19.2 If a Brief Schedule is cancelled:
- 19.2.1 by (Client) before the Service Provider has booked advertising space with the relevant media, no cancellation fee will be applicable;
- 19.2.2 by (Client) after the Service Provider has booked advertising space with the relevant media, (Client) shall pay the Service Provider a cancellation fee as stipulated in clause 9 of this Agreement.
- 19.2.3 by the Service Provider, before or after booking advertising space, (Client) shall not be liable for a cancellation fee.
- 19.3 The cancellation of a Brief Schedule in terms of clause 19.1 shall not affect the validity of any Brief Schedule signed by the Parties prior to such cancellation. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

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20. DISPUTE RESOLUTION

- 20.1 The Parties shall initially attempt in good faith to promptly resolve any dispute arising out of relating to this Agreement and through negotiations between the (Client) Representative and Service Provider's Liaison Person.
- 20.2 If the dispute is not resolved through such negotiation either or both of the Parties may refer the matter to (Client)'s Liaison Officer, in the case of (Client) and the Service Provider's Director in the case of the Service Provider (or their duly authorized representatives) for review and resolution. The aforementioned persons (or their duly authorized representatives) shall meet or discuss the matter as soon as practicable after a matter has been referred to them and, in any event, within 15 (fifteen) days of the referral.
- 20.3 If the Parties are not able to resolve a dispute arising from or in connection with this Agreement, the dispute shall be referred to the Managing Director of the Service Provider and in the case of (Client) a responsible person who shall attempt to resolve the dispute. If these 2 (two) persons are not able to resolve the dispute, other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, the dispute/it shall be submitted to and resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA.
- 20.4 The arbitration shall be held:
- 20.4.1 with only the Parties and their representative present thereat;
- 20.4.2 at Cape Town, South Africa.

21. GENERAL

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J.B.

169 Main Street
Private Bag 53
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3297



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21.1 ENTIRE AGREEMENT

This Agreement (together with any Brief Schedules) constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof. The Parties shall not be bound by any representation, express or implied term, warranty, undertaking or other obligation, unless recorded herein. This Agreement supersedes any previous agreements pertaining to the subject matter.

21.2 AMENDMENTS

No consensual cancellation or amendment of this Agreement (or this clause) shall be valid, unless in writing and signed by or on behalf of both of the Parties.

21.3 WAIVER

No indulgence, which any Party may grant to the other, shall constitute a waiver of or prejudice the rights of the Party granting the indulgence.

21.4 SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable, it shall be severed from the remainder of the Agreement, which shall remain valid and enforceable.

21.5 CESSION AND DELEGATION

Neither Party may cede its rights or delegate its obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

21.6 GOOD FAITH

The Parties shall at all times observe the principles of good faith towards each other and in their dealings with each other, their respective employee(s) and representative(s).

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Fax: (039) 259 0427

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PROVINCE OF KWAZULU-NATAL
KZN 435

21.7 NOTICES

21.7.1 Any Notices by the Parties in terms of this Agreement shall either be hand delivered or sent by registered post or sent by facsimile message to the details mentioned in Annexure A.

21.7.2 The street addresses specified shall be regarded as the domicilia citandi et executandi of the respective Parties.

21.7.3 Unless the contrary is proved Notices:

21.7.3.1 sent by registered post shall be deemed to have been received 7 (seven) days after date of posting; and

21.7.3.2 sent by facsimile shall be deemed to have been received on the date reflected on the transmission slip; and

21.7.3.3 delivered by hand shall be deemed to have been received on the date of delivery.

21.7.4 Any one of the Parties may change its contract particulars by giving 7 (seven) days notice thereof to the other Party.

21.8 COUNTERPARTS

This Agreement may be signed in counterparts, in which case the counterparts jointly shall constitute the Agreement.

21.9 SET-OFF

(Client) shall be entitled to set-off any amount due to it by the Service Provider against any amount due to the Service Provider by (Client), and vice versa.

21.10 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with South African law.

21.11 COSTS

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J.H.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhululm.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL
KZN 435

Each Party shall bear its own cost of and incidental to the negotiation, preparation, settling, signing and implementation to this Agreement.

ADVERTISING SERVICES AGREEMENT

BETWEEN

AYANDA MBANGA COMMUNICATIONS (PTY) LIMITED

Registration Number: 1980/009032/07

(Hereinafter referred to as "the Service Provider")

AND

Sey

J.G.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhululm.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

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KZN 435

Umzimkhulu Municipality

Registration Number: 4300156819

(Hereinafter referred to as "(Client)")

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms/expressions shall bear the meanings assigned to them below:

1.1.1 "Affiliate" means any legal entity of the (Client) Group;

1.1.2 "Agreement" means this written document together with its annexure;

1.1.3 "Brief" means the advertising brief; that is a request by (Client) for the Service Provider to render the Services;

1.1.4 "Candidate" means an applicant in respect of a Vacancy;

1.1.5 "Day" means a calendar day;

1.1.6 "In Writing" included e-mail correspondence;

1.1.7 "Notice" shall mean a written document;

1.1.8 "(Client) Representative" means an employee of (Client) who is a manager or an authorised representative who engages the Services of the Service Provider;

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169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhululm.gov.za
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- 1.1.9 "Parties" means (Client) and the Service Provider;
- 1.1.10 "Services" means the recruitment, legal notices, tender and other forms of advertising services to be rendered by the Service Provider;
- 1.1.11 "Vacancy" means the job or position available and that (Client) is recruiting for.
- 1.2 Clause headings are used for the purpose of convenience only and shall not be taken into account in the interpretation of the agreement.
- 1.3 Where the singular form of a word is used it shall be deemed to include the plural and vice versa.
- 1.4 Any terms and conditions of this Agreement have been negotiated; the contra proferentem rule shall not apply in the interpretation of the Agreement.
- 1.5 Any provision in the definition and interpretation clause conferring rights or imposing obligations on any Party shall be regarded as a substantive provision of the Agreement, regardless of the fact that it only appears in the said clause.

2. ENGAGEMENT

- 2.1 (Client) may from time to time require the Services and may engage the Service Provider to perform such Services by concluding a Brief Schedule with the Service Provider.
- 2.2 The Service Provider is an advertising agency, which offers recruitment advertising services, legal notices, tender and other forms of advertising and wishes to render the Services to (Client).
- 2.3 This Agreement records the terms and conditions on which the Service Provider will

Scy

J.H.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhululm.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

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render the Services to (Client) and shall apply to all the Services that the Service Provider provides to (Client).

3. AFFILIATES

3.1 By concluding a brief Schedule with the Service Provider the Affiliate acknowledges and agrees to the terms and conditions of this Agreement and subject to the provisions of clause 3.2 to this Agreement, as if it were a signatory to this Agreement in its own right.

3.2 An Affiliate shall be bound by and shall be entitled to exercise all the rights contained in this Agreement, only to the extent that it applies to Brief Schedules concluded by the Affiliate.

4. REFERENCE TO (CLIENT)

For the purpose of the contractual relationship, which comes into being between the Service Provider and Affiliates on the signing of Brief Schedules, all references to (Client) in this Agreement shall deemed to be a reference to Affiliates.

5. PRECEDENCE

Each Brief Schedule signed by the Parties shall constitute a separate agreement between the Parties and shall incorporate the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and the provisions contained

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169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
Tel: (039) 259 5000/5300
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in the Brief Schedule, the last-mentioned provisions shall prevail.

6. DURATION

This agreement shall:

- 6.1 Commence on the Effective Date; and
- 6.2 Subject to the provisions of clause 17 and 18; endure for a period of 12 (12) months.

7. SERVICES

If (Client) wishes to engage the Service Provider to provide the Services:

- 7.1 A (Client) Representative should contact the Service Provider's liaison person with a Brief.
- 7.2 The Service Provider shall acknowledge receipt of the Brief in accordance with point 8 of this Agreement.
- 7.3 If the Business Unit or Affiliate has not previously briefed the Service Provider, the particular Business and / or Affiliate will be required to complete a credit application form to register with the Service Provider as a user.

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J.B.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
Tel: (039) 259 5000/5300
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7.4 In the case of a recruitment advertisement, after the account has been confirmed, the (Client) Representative and the Service Provider's Liaison Person will meet or arrange time to discuss which external media would be best suited to attract the right Candidate for that specific Vacancy.

7.5 The Service Provider shall proceed to draw up the advertisement in accordance with (Client)'s house-style format as approved by (Client).

7.6 The Service Provider shall submit a first proof of the advertisement together with a quotation within the timeframe agreed on in the Brief Schedule.

- 7.6.1 Price of the advertisement (including Value Added Tax);
- 7.6.2 measurements and other features of the advertisement;
- 7.6.3 date of placement of the advertisement;
- 7.6.4 publication in which the advertisement is to be placed.

7.7 Once the (Client) Representative has accepted the quotation the Parties must ensure that a Brief Schedule is completed and signed and an appropriately authorised purchase order form submitted where applicable.

7.8 The Service Provider shall submit a first proof of the advertisement for the approval of (Client) in accordance with the Service Levels set out in point 8 of this Agreement.

7.9 (Client) shall communicate any required amendments to the advertisement, within an agreed timeframe after receipt of the first proof. If (Client) is satisfied with the proposed advertisement, the (Client) Representative must sign the advertisement off and send it to the Service Provider. If (Client) confirms in writing that it does not require any changes, this will be regarded as final approval.

Signature: [Handwritten signature] [Stamp]

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

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7.10 The Service Provider shall, within 1 (one) Business Day after receipt of the required amendments, amend the advertisement and resubmit the final proof to (Client) for approval. (Client) shall communicate its final approval in writing that it does not require any changes. This will be regarded as final approval.

7.11 Provided that (Client) has met each time period specified above, the Service Provider shall ensure that the advertisement is published on the date originally specified in the quotation.

The advertising services that the Service Provider will provide includes the following:

7.12 Assimilation / assessment of the Brief

7.13 Create, design, prepare and submit an advertising proposal to (Client)

7.14 Advise on the best media platform for the placing of the advertisements

7.15 Copywriting

7.16 English, Xhosa and Afrikaans translations

7.17 Local / Overseas media searches and advice

7.18 Order and negotiate advertising space at all times endeavouring to secure the most efficient and advantageous rates available to (Client)

7.19 Transmission of final advertising material to the media

Scy J.G.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
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- 7.20 Prepare and submit quotations of advertising costs and expenses for approval by (Client)
- 7.21 Reconcile media invoices and provide proof of advertisements ("tear sheets")
- 7.22 Ensure brand continuity of (Client) during advertising
- 7.23 Perform such other related services as (Client) may reasonably request from time to time, such as, but not limited to response management and market research.

8. SERVICE LEVELS AND STANDARDS

The Service Provider warrants that the Services shall be of a professional standard and that the Services shall be rendered with due care, skill and diligence. Without detracting from the generality of this obligation, the Service Provider undertakes to meet the Service Levels set out below.

8.1 ADVERTISING

DESCRIPTION	TIMEFRAME
Acknowledgement of Brief	1 (one) Business Day after receipt of Brief
First proof of advertisement	1 (one) Business Day after Acknowledgement of Brief

8.2 RESPONSE MANAGEMENT (Where required)

DESCRIPTION	TIMEFRAME
CV short list	3 – 5 Business Days

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J.G.

169 Main Street
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Conduct reference checks on short-listed candidates

5 – 10 Business Days

9. FEES AND PAYMENT CONDITIONS

In consideration for the proper rendering of the Services by the Service Provider, (Client) shall remunerate the Service Provider as set out below:

9.1 (Client) shall not remunerate the Service Provider for the Services.

9.2 It is recorded that the Service Provider is remunerated on a commission basis by the media. The commission does not normally exceed 16.5% (sixteen and a half percent) of the publication cost of the advertisement in the South African media. The Service Provider undertakes to notify (Client) in advance, if this commission percentage is to be exceeded or whichever percentages apply abroad.

9.3 The Service Provider shall, however, as agent of the media, collect the publication cost of the advertisement on behalf of the media and shall thus invoice (Client) for such cost. In the case of a recruitment advertisement, each vacancy advertised shall be invoiced separately. Each invoice per advertisement shall reflect the following:

- 9.3.1 date on which advertisement was published;
- 9.3.2 publication in which the advertisement was placed;
- 9.3.3 in the case of a recruitment advertisement – the job title advertised and
- 9.3.4 whether the Vacancy was advertised as part of a composite advertisement or as a standalone (single format) advertisement;
- 9.3.5 cost of publication of advertisement,

Scy J.G.

169 Main Street
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Email: info@umzimkhulu.gov.za
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9.3.6 (Client) Business Unit / Affiliate and name of (Client) Representative for whom advertisement was placed;

9.3.7 cost-centre of Business Unit / line manager, per title advertised.

9.4 The Service Provider will not be compensated on a commission basis for response management where this service is required. Where the Service Provider renders response management services, the Service Provider will charge the tariff as agreed upfront.

9.5 The Service Provider shall submit an original invoice to the (Client) Representative once the advertisement has been placed.

9.6 Save for any amounts disputed by (Client) in accordance with the provisions of clause 8, the amount/s stated in each invoice shall be due and payable within 30 (thirty) days of the date of receipt of such invoice by (Client).

9.7 (Client) shall make payment to the Service Provider electronically; into the bank account provided by the Service Provider.

9.8 Apart from the publication costs, any costs of and incidental to the Services, of whatsoever nature and howsoever arising, shall be agreed upon between the Parties in writing, in advance and shall not be paid by (Client) to the Service Provider in the absence of such agreement.

9.9 Should (Client) dispute any amount appearing on an invoice submitted to (Client) pursuant to this Agreement ("the affected invoice"), (Client) shall give the Service Provider notice, of such dispute, specifying:

9.9.1 the affected invoice;

9.9.2 the specific amount in dispute;

9.9.3 the reasons or grounds for such dispute.

Scy J.G.

169 Main Street
Private Bag 53
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9.10 Any amount so disputed shall not be regarded as "due and payable" as contemplated herein above and if the Parties are unable to resolve such dispute, the matter shall be referred to arbitration in terms of clause 19.

9.11 If Brief Schedules are terminated as envisaged in clause 19.2.1, (Client) shall be liable for a cancellation fee, which shall be 50% (fifty percent) of the commission due to the Service Provider.

10. CONFIDENTIALITY

The Service Provider shall in the course of its dealings with (Client) gain access to information of a sensitive, confidential and/or proprietary nature. The Service Provider undertakes not to divulge this information to any party without the express agreement in writing of (Client), and further undertakes to sign a confidentiality agreement as per (Client) company regulations.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 All intellectual property rights arising from the Service (including but not limited to advertising prepared or published) shall vest in (Client).

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169 Main Street
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Umzimkhulu
3297



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11.2 The Service Provider undertakes to use (Client) trademarks strictly in accordance with (Client) requirements. In this regards the Service Provider undertakes not to use the registered trademark of any third party, competitor or otherwise, in (Client) advertising without prior consultation and written agreement of (Client).

12. GENERAL OBLIGATIONS OF THE AGENCY

Notwithstanding any other obligations of the Service Provider contained elsewhere in this Agreement, the Service Provider shall:

12.1 allocate a dedicated Advertising Consultant to (Client). As at the Effective Date, the Service Provider's Liaison Person shall be the person identified as such in Annexure A;

12.2 build the (Client) brand to create a suitable climate for future business;

12.3 reduce risk factors associated with recruitment and other advertising;

12.4 provide media recommendations to (Client), in order to ensure that (Client) reaches its target market;

12.5 ensure that brand consistency and uniformity is maintained with the placement of each advertisement;

12.6 negotiate the best possible price and position on the page with the media, to ensure cost-effective advertising;

12.7 inform (Client) of all publisher's special discounts and package prices for multiple

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media within the same group;

12.8 ensure that the wording of all the advertisements are compliant with all legal and statutory requirements and are fair, non-offensive, non-discriminatory, non-racial and reasonable;

12.9 comply with all reasonable instructions received from (Client), pertaining to the rendering of the Services;

12.10 ensure that all verbal instructions received from (Client) are confirmed in writing, before executing the instructions;

12.11 stay abreast of recruitment advertising and response management trends;

12.12 notify (Client) of any changes that adversely affect the Service Provider's Black Economic Empowerment status;

12.13 not refer to (Client) in any of its communications to third parties or in any of its marketing or promotional material or on its website, without the prior written approval of (Client).

13. AUDIT

13.1 The Service Provider shall allow (Client) access to its premises upon 24 (twenty four)

169 Main Street
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hours notice in order that (Client) may perform an audit of the Service Provider's compliance with the Agreement.

13.2 In order to facilitate the audit, the Service Provider shall make available all records, books of account and other documents pertaining to the Services performed by the Service Provider.

14. COMMUNICATION

14.1 The Service Provider shall direct all communication in respect of the Services to the specific (Client) Representative (or his/her representative) dealing with the Brief and who engaged the Service Provider to render the Services.

14.2 Communication relating to the Agreement in general shall be directed to the person referred to as (Client) Liaison Officer in Annexure A.

15. INDEMNITY

The Service Provider hereby indemnifies (Client) against any liability (whether based in contract, delict or any other cause), which (Client) or the Service Provider may incur towards any third party, arising from the noncompliance by the Service Provider with its obligations in terms of this Agreement.

16. WARRANTIES

169 Main Street
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The Service Provider warrants that it is familiar with and undertakes to comply with all legislation, and other laws pertaining to the industry, which applies and which the Service Provider will be rendering in terms of this Agreement.

17. BREACH

17.1 In the event of either Parties:

17.1.1 committing a breach of any of the material conditions of this Agreement and/or Brief Schedule and failing to remedy such breach within 5 (five) Business Days of receipt of Notice from the other Party requesting it to remedy such breach; or

17.1.2 becoming insolvent, compromising or attempting to compromise with any of its creditors, or being placed under provisional or final liquidation or under judicial management; or

17.1.3 committing an act which, if the Parties had been individuals would have constituted an act of insolvency in terms of the Insolvency Act 24 of 1936;

then the other Party shall be entitled to cancel this Agreement and/or the Brief Schedule forthwith and claim such damages or losses as it may have suffered.

17.2 The provision of this clause 17 shall not affect or prejudice any other rights/remedies, which the Parties may have by law.

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169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
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17.3 The cancellation of this Agreement in terms of clause 18.1 shall not affect the validity of any Brief Schedule signed by the parties prior to such cancellation. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

18. TERMINATION OF AGREEMENT

18.1 Either one of the Parties may terminate this Agreement at any time by merely giving at least

90 (ninety) Days Notice of such termination to the other Party.

18.2 The termination of this Agreement in terms of clause 18.1 shall not affect the validity of any Brief Schedule signed by the Parties prior to such termination. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

19. TERMINATION OF ASSIGNMENT

19.1 Either one of the Parties may terminate a Brief Schedule at any time.

19.2 If a Brief Schedule is cancelled:

19.2.1 by (Client) before the Service Provider has booked advertising space with the relevant media, no cancellation fee will be applicable;

19.2.2 by (Client) after the Service Provider has booked advertising space with the relevant media, (Client) shall pay the Service Provider a cancellation fee as stipulated in clause 9 of this Agreement.

19.2.3 by the Service Provider, before or after booking advertising space, (Client) shall not

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169 Main Street
Private Bag 53
Umzimkhulu
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Email: info@umzimkhulum.gov.za
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be liable for a cancellation fee.

19.3 The cancellation of a Brief Schedule in terms of clause 19.1 shall not affect the validity of any Brief Schedule signed by the Parties prior to such cancellation. The provisions of this Agreement shall remain applicable to all such Brief Schedules still in force.

20. DISPUTE RESOLUTION

20.1 The Parties shall initially attempt in good faith to promptly resolve any dispute arising out of relating to this Agreement and through negotiations between the (Client) Representative and Service Provider's Liaison Person.

20.2 If the dispute is not resolved through such negotiation either or both of the Parties may refer the matter to (Client)'s Liaison Officer, in the case of (Client) and the Service Provider's Director in the case of the Service Provider (or their duly authorised representatives) for review and resolution. The aforementioned persons (or their duly authorised representatives) shall meet or discuss the matter as soon as practicable after a matter has been referred to them and, in any event, within 15 (fifteen) days of the referral.

20.3 If the Parties are not able to resolve a dispute arising from or in connection with this Agreement, the dispute shall be referred to the Managing Director of the Service Provider and in the case of (Client) a responsible person who shall attempt to resolve the dispute. If these 2 (two) persons are not able to resolve the dispute, other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, the dispute/it shall be submitted to and resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA.

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169 Main Street
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3297



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20.4 The arbitration shall be held:

20.4.1 with only the Parties and their representative present thereat;

20.4.2 at Cape Town, South Africa.

21. GENERAL

21.1 ENTIRE AGREEMENT

This Agreement (together with any Brief Schedules) constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof. The Parties shall not be bound by any representation, express or implied term, warranty, undertaking or other obligation, unless recorded herein. This Agreement supercedes any previous agreements pertaining to the subject matter.

21.2 AMENDMENTS

No consensual cancellation or amendment of this Agreement (or this clause) shall be valid, unless in writing and signed by or on behalf of both of the Parties.

21.3 WAIVER

No indulgence, which any Party may grant to the other, shall constitute a waiver of or prejudice the rights of the Party granting the indulgence.

21.4 SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable, it shall be severed from the remainder of the Agreement, which shall remain valid and enforceable.

21.5 CESSION AND DELEGATION

169 Main Street
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Neither Party may cede its rights or delegate its obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

21.6 GOOD FAITH

The Parties shall at all times observe the principles of good faith towards each other and in their dealings with each other, their respective employee(s) and representative(s).

21.7 NOTICES

21.7.1 Any Notices by the Parties in terms of this Agreement shall either be hand delivered or sent by registered post or sent by facsimile message to the details mentioned in Annexure A.

21.7.2 The street addresses specified shall be regarded as the domicilia citandi et executandi of the respective Parties.

21.7.3 Unless the contrary is proved Notices:

21.7.3.1 sent by registered post shall be deemed to have been received 7 (seven) days after date of posting; and

21.7.3.2 sent by facsimile shall be deemed to have been received on the date reflected on the transmission slip; and

21.7.3.3 delivered by hand shall be deemed to have been received on the date of delivery.

21.7.4 Any one of the Parties may change its contract particulars by giving 7 (seven) days notice thereof to the other Party.

21.8 COUNTERPARTS

This Agreement may be signed in counterparts, in which case the counterparts jointly shall constitute the Agreement.

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21.9 SET-OFF

(Client) shall be entitled to set-off any amount due to it by the Service Provider against any amount due to the Service Provider by (Client), and vice versa.

21.10 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with South African law.

21.11 COSTS

Each Party shall bear its own cost of and incidental to the negotiation, preparation, settling, signing and implementation to this Agreement.

22. PAYMENTS

- The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
 - The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
 - Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
 - Payment will be made in Rand unless otherwise stipulated in SCC
- Subject with full compliance by the service provider with the provisions of this contract,
- Umzimkhulu Municipality will, in accordance with the provisions of this contract, pay to the service provider for all services satisfactorily completed to date.
 - Umzimkhulu Municipality shall pay any sums due within 30 days subject to Umzimkhulu Municipality being satisfied with the following:
 - Receipt of claim between the 15th and 20th of every month unless stated otherwise by the Municipality.
 - Monthly Report shall be attached to the payment certificate failing which the claim will be deemed invalid;

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J.G.

169 Main Street
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- Receipt of itemized invoice reflecting also the Date; Municipal VAT No: 4300156819.; Contractor's VAT No and Contractor's signature;
- Invoice to clearly state TAX INVOICE;
- All invoices should be addressed to the Municipal Manager, Umzimkhulu Municipality, P.O. Box 53, Umzimkhulu, 3297 and shall quote the Project Name and Number.

23. PRICES

- Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

24. PENALTIES AND DELAYS ON SUPPLIER PERFORMANCE

- Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not

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J.G.

169 Main Street
Private Bag 53
Umzimkhulu
3297



Email: info@umzimkhulu.gov.za
Tel: (039) 259 5000/5300
Fax: (039) 259 0427

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situated at or near the place where the supplies are required, or the supplier's services are not readily available.

- Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

25. GENERAL

No act of relaxation on the part of the customer in regard to the carrying out of any of the service providers obligations in terms of this Agreement shall prejudice or be deemed to be a waiver of any of the customers rights and terms hereof.

- No act of relaxation on the party of the service provider in regard to the carrying out of any of the customer's obligations in terms of this Agreement

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3297



Email: info@umzimkhululm.gov.za
Tel: (039) 259 5000/5300
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shall prejudice or be deemed to be a waiver of any of the service provider's rights in terms hereof.

- This agreement constitutes the entire contract between the parties to this Agreement and neither of them may rely on any representation, undertaking, term or condition that is not included in this Agreement.
- No agreement to vary, add or cancel this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of the parties.
- The service shall report to the Infrastructure department - manager in charge of the project on monthly basis. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

SIGNED BY THE CUSTOMER" ULM" AT UMZIMKHULU THIS 11 DAY OF

JUNE 2018 2021

Z.S. SIKHOSHA

Name

In his capacity as the ULM
Municipal Manager

Witness

1. M. Mbiko

Name

Signature

Witness

2. S. Dlamini

Name

Signature

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SIGNED BY THE Contractor AT_Durban__THIS 11 DAY OF

JUNE 2021

Managing Member

Irene Gilbert
Name

Witness 1. Zakhele Ngubo
Name

Witness 2. Melissa Govender

Signature

Name

Signature

Signed at Durban on this 11 day of

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PROVINCE OF KWAZULU-NATAL
KZN 435

JUNE 2021

NAME: Irene Gilbert DESIGNATION: Regional Manager

SIGNATURE:

(FOR (CLIENT) AND DULY AUTHORISED THERETO)