

169 Main Street  
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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
ICZN 435

### Service Level Agreement

| ITEM NO | DETAILS REQUIRED                      | DETAILS CONSTRUCT                                                                      |
|---------|---------------------------------------|----------------------------------------------------------------------------------------|
| 1       | Project Name                          | Construction of Ncambele Access Road                                                   |
| 2       | The Contractor /Contractor            | Lethokuhle Investments cc                                                              |
| 3       | Contract Number                       | 8/2/1/325                                                                              |
| 4       | Contractor's Active<br>Postal Address | 49 Main Street, uMzimkhulu, 3297                                                       |
| 5       | Commencement Date                     | 22/02/2022                                                                             |
|         | Termination Date                      | 20/10/2022                                                                             |
| 6       | .1 Contractor's Active Fax No.        | 086 5526 887                                                                           |
|         | .2 Telephone Numbers                  | 033 940 1731                                                                           |
|         | .3 Contractor's E-mail Address        | <a href="mailto:info@lethokuhleinvestments.co.za">info@lethokuhleinvestments.co.za</a> |
| 7       | Contract Amount                       | R 5 927 390.26                                                                         |
| 8       | Annexures                             | (a) Tender Document.<br>(b) Appointment Letter.<br>(c) Acceptance Letter.              |

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PROVINCE OF KWAZULU-NATAL  
KZN 435

### Approval

(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement.) Please not 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 contractor to render service successfully. In case where the signed documents contradict any of the terms to this agreement the proposal document shall then be used as a guiding document to this agreement.

| Name                          | Role       |
|-------------------------------|------------|
| Lethokuhle Investments cc     | Contractor |
| UMZIMKHULU LOCAL MUNICIPALITY | Client     |

### Agreement Overview

This Agreement represents a Service Level Agreement ("SLA" or "Agreement") between Lethokuhle Investments cc herein represented by Mr Vuyani Mkhulisi in his capacity as the Director of the company. and UMzimkhulu Local Municipality represented by Mr. ZS Sikhosana in his capacity as the municipal Manager.

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

This Agreement outlines the parameters of Construction of Ncambele Access Road. The Contractor responded to the advert / invitation to a tender no ULM-INFR020/21 for the Construction of Ncambele Access Road.

Lethokuhle Investments cc responded on the advert and as a result thereon Lethokuhle Investments cc was then appointed by the municipality as a contractor for the Construction of Ncambele Access Road at a tendered amount mentioned in the contract sum column.

Wherefore thus uMzimkhulu Municipality appointed Lethokuhle Investments cc for Construction of Ncambele Access Road and the duration of the contract shall be 8 Months starting from the 22/02 2022 and ending on the 20/10 2022.

### 1. Goals & Objectives

The purpose of this Agreement is for the Construction of Ncambele Access Road

All the objectives are clearly defined in the schedule marked "Annexure A" (Terms of Reference) wherein the

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PROVINCE OF KWAZULU-NATAL  
KZN 435

contractor will construct the Construction of Ncambele Access Road as it is stated in terms of the tender document.

The municipality shall advise the Contractor 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 Contractor, Lethokuhle Investments cc and Customer(s)/ Client uMzimkhulu Local Municipality will be used as the basis of the Agreement and represent the primary stakeholders associated with this SLA.

Contractor (s): Lethokuhle Investments cc

Having its head office at: Highlands Location

Telephone 033 9401 731

Fax number N/A 086 5526 887

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

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

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PROVINCE OF KWAZULU-NATAL  
KZN 435

### 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 contractor 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, provision of 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 contractor 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 contractor must be used as the basis of submitting these reports.

### 4. Definitions

The following terms shall be interpreted as indicated:

- "Acceptable bid" means any bid, which, in all respects, complies with the specifications and conditions of the bid as set out in the bid document.
- "Bid" means a written offer in a prescribed or stipulated form in response to an invitation by an organ of State for the construction of goods, works or services.
- "Black enterprise" means an enterprise that is 50, 1% owned by black persons and where there is substantial management control. Ownership refers to economic interest while management refers to the membership of any board or similar governing body of the enterprise.

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

- "Black empowered enterprise" means an enterprise that is at least 25,1% owned by black persons and where there is substantial management control. Ownership refers to economic interests. Management refers to executive directors. This is whether the black enterprise has control or not.
- "Black people" includes all African, Coloured or Indian persons who are South African citizens by birth or by descent or who were naturalized prior to the commencement of the constitution in 1993. In addition, the term also includes black people who became South African citizens after the constitution's commencement but who would have been able to be naturalized prior to this, were it not for the Apartheid laws which prohibited naturalization of certain persons. This means that an African, Coloured or Indian person who was not a South African citizen before the commencement of the constitution in 1993 but who would have been entitled to apply to be naturalized prior to 1993, will also be considered a black person and therefore a beneficiary of BEE.
- "Black woman-owned enterprise" means an enterprise with at least 25, % representation of black women within the black equity and management portion.
- "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- "Comparative price" means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.
- "Community or broad-based enterprise" means an enterprise that has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth, and workers. Shares are held via direct equity, non-profit organizations, and trusts.

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PROVINCE OF KWAZULU-NATAL  
KZN 435

Benefits from the shareholding should in a measurable sense be directed towards the uplifting of the community through job creation, welfare, skills development, entrepreneurship, and human rights. At the same time, directors and management of groups should significantly comprise black persons.

These arrangements are appropriate in situations where the activities or operations of an enterprise or industry directly impact on a community or are in a community or may benefit a community. Notable examples are large industrial projects, mining, and tourism. Other instances, which do assist in broadening the shareholder base, are employee share ownership schemes; these are a viable empowerment shareholder option. In this and other circumstances, these arrangements should not detract from the ability of the shareholder to exercise significant influence or control over the operations of the business.

- "Consortium or joint venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills, and knowledge in an activity for the execution of a contract.
- "Contract" means the written agreement entered between the purchaser and the supplier, this shall also mean (Contractor and Customer), as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- "Control" means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
- "Co-operative or collective enterprise" is an autonomous association of persons who voluntarily join to meet their economic, social and

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

cultural needs and aspirations through the formation of a jointly owned enterprise and democratically controlled enterprise.

- "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- "Country of origin" means the place where the goods were mined, grown, or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- "Day" means calendar day.
- "Delivery" means delivery in compliance with the conditions of the contract or order.
- "Delivery ex stock" means immediate delivery directly from stock on hand.
- "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- "Disability" means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

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- "Dumping" occurs when a private enterprise abroad markets its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- "Equity Ownership" means the percentage ownership and control, exercised by individuals within an enterprise.
- "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- "GCC" means the General Conditions of Contract.
- "Goods" means all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- "Historically Disadvantaged Individual (HDI)" means a South African citizen -
  - who, due to the Apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act 200 of 1993) ("the interim Constitution"); and/or
  - who is a female; and/or

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

- who has a disability:

Provide that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI.

- "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- "Local content" means that portion of the bidding price which is not included in the imported content construct that local manufacture does take place.
- "Management" means an activity inclusive of control and performed daily, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether that person is a director.
- "Manufacture" means the production of products in a factory using labour, materials, components, and machinery and includes other related value-adding activities.
- "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- "Owned" means having all the customary elements of ownership, including the right of decision-making, and sharing all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

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PROVINCE OF KWAZULU-NATAL  
KZN 435

- "Parliament" means Parliament of the Republic of South Africa as set out in Chapter Four of the Constitution.
- "Person" includes reference to a juristic person.

"Project site" where applicable, means the place indicated in bidding documents.

- "Purchaser" means the organization purchasing the goods.
- "Rand value" means the total estimated value of a contract in Rand denomination that is calculated at the time of the bid invitations and includes all applicable taxes and excise duties.
- "Republic" or "RSA" means the Republic of South Africa.
- "RFP" means Request for Proposal.
- "RFT" means Request for Tender.
- "RFQ" means Request for Quotation.
- "SCC" means the Special Conditions of Contract.
- "Secretary" means the Secretary to Parliament.
- "Services" means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, construction of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- "Specific contract participation goals" means the goals as stipulated in the Preferential Procurement Regulations, 2001. In addition to above-mentioned goals, the Regulations [12. (1)] also make construction for organs of State to consider procuring locally manufactured products.

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PROVINCE OF KWAZULU-NATAL  
KZN 435

- "Small, Medium and Micro Enterprises (SMMEs) bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act 102 of 1996).
- "Sub-contracting" means the primary contractor's assigning or leasing or making out work to or employing another person to support such a primary contractor in the execution of part of a project in terms of the contract.
- "Trust" means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- "Trustee" means any person, including the founder of a trust, to whom property is bequeathed for such property to be administered for the benefit of another person.
- "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

### 5. Application

- These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

Where such special conditions of contract conflict with these general conditions, the special conditions shall apply.

### 7. Standards

- The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

### 8. Use of contract documents and information; inspection

- The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any construction thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in relevant clauses of the 2015 GCC except for purposes of performing the contract.
- Any document, other than the contract itself mentioned in GCC concerning this contract shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so, required by the purchaser.

The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser

### 9. Patent rights

- The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

### 10. Performance security

- Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- The proceeds of the performance security shall be payable to the purchaser as

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

- The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form construct in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

### 11. Warranty

- The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless construct otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of destination.
- This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- The purchaser shall promptly notify the supplier in writing of any claims arising

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

under this warranty.

- Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

### 12. Payment

- 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 Contractor with the constructions of this contract, Umzimkhulu Municipality will, in accordance with the constructions of this contract, pay to the Contractor for all works 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 15<sup>th</sup> and 20<sup>th</sup> 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.
  - Receipt of Itemized invoice also reflecting the Date; Municipal

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
ICZN 438

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.

### 13. 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, except for any price adjustments authorized in SCC or in the purchaser's request for bid validity extension.

### 14. Contract amendments

- No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

### 15. Assignment

- The supplier / Contractor shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's / Customer prior written consent.

### 16. Subcontracts

- The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

contract.

### 17. Delays in the supplier's performance / Contractor

- 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 construction 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 situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- Except as construct under GCC Clause concerning delays, 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 Clauses relevant to such penalties, unless an extension of time is agreed upon pursuant to GCC Clauses 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.

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

### 18. Penalties

- Subject to GCC Clause for any causes that is not justifiable but causes / caused delays , if the supplier fails to deliver any or all of the goods or to 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 Clauses relevant and that speaks to termination. Penalty for failing to complete the works is R2000 per day.

### 19. Termination for default

- The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clauses relevant;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

20. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services like those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

### 21. Anti-dumping and countervailing duties and rights

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

- When, after the date of bid, constructional payments are required, or antidumping or countervailing duties are imposed, or the amount of a constructional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for any such increase. When, after the said date, such a constructional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such constructional payment or any such right is reduced, any such favorable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

### 22. Force Majeure

- Notwithstanding the constructions of GCC Clauses relevant, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

### 23. Termination for insolvency

- The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, construct that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- This agreement shall terminate on occurrence of any of the following events:
- If the contractor breaches any term of this Agreement and has failed to correct its breach within the time construct therefore, then and in that event the customer

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

may proceed to cancel and terminate the agreement.

- In the event of termination of this Agreement for any reason whatsoever, irrespective of whether it is by agreement, breach, or expiry of time. This agreement shall be considered as terminated.

### 24. Settlement of Disputes

- If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- Notwithstanding any reference to mediation and/or court proceedings herein,
  - (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

### 25. Limitation of liability

- Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to clauses relevant.
  - (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
ICZN 435

otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, construct that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, construct that this limitation shall not apply to the cost of repairing or replacing defective equipment.

### 26. Governing language

- The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

### 27. Applicable law

- The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

### 28. Notices

- Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

### 29. Taxes and duties

- A foreign supplier shall be entirely responsible for all taxes, stamp duties, license

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

fees, and other such levies imposed outside the purchaser's country.

- A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid, Parliament must be in possession of a tax clearance certificate, submitted by the bidder. This certificate and pin for verification must be issued by the South African Revenue Services (SARS).

### 30. Ownership and Copyright

- Ownership of all products produced in terms of this agreement, of whatever nature, vest in Parliament.
- The copyright of products, of whatever nature, commissioned and produced in terms of this agreement, and that have been paid for by the Secretary are owned exclusively by Parliament.

### 31. Service Agreement

The contractor shall render services as stipulated therein in the scheduled marked "Annexure A" should there be conflict to the annexure bid proposal marked "Annexure A : Construction of Kwa Fish Access Road.

### 32. Customer Requirements

Customer responsibilities and/or requirements in support of this Agreement include:

- Payment for all support costs at the agreed interval.
- Reasonable availability of customer representative(s) when resolving a service-related incident or request.
- Shall construct any information necessary to help the contractor achieve outlined objectives in "Annexure A"
- Shall upon receipt of any relevant documentation on payments, pay the contractor as it prescribed by the treasury regulations

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

### 33. Contractor Requirements / Contractor

- The Construction of Ward 02 Kwa Fish access road in terms of the tender documentation tendered and accepted by the client.

### 34. Service Expected from the Contractor

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- The Contractor will be required to render / construct the services as stipulated by "Annexure A", and drive the project in conjunction with the necessary stakeholders and all other relevant interested and affected groups.

### 35. Service Requests

In support of services outlined in this Agreement, the Contractor will respond to service-related incidents and/or requests submitted by the Customer within the following time frames:

- 0-8 hours (during business hours) for issues classified as High priority.
- Within 48 hours for issues classified as Medium priority.
- Within 5 working days for issues classified as Low priority.

Remote assistance will be construct in-line with the above timescales dependent on the priority of the support request.

### 36. Breach

If the contractor commits.

- Commits a material breach of this Agreement and fail to remedy the breach within 10 (ten) Business Days after receipt from the customer of written notice calling upon it to do so;
- Commits or attends to commit an act of insolvency.
- Goes into liquidation whether provisionally or finally.
- Delegate, cedes or subcontracts this Agreement or part thereof in contravention of the constructions hereof.
- Offers, promises, or gives a bribe or other gift or remuneration to any officer or employee in the service of the ULM in connection with the execution of this Agreement.
- Abandons or otherwise repudiates any of its obligation in terms of this Agreement.

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

- Consistently fails to observe any material construction of this Agreement.
- Then the customer shall be entitled in addition to its step-in-rights to without prejudice to any other right it may have in law or in terms of this Agreement to enforce specific performance of the terms of this Agreement or to cancel this Agreement forthwith on notice to the contractor and in either event recover such damages as it may have sustained.

The customer;

- Commits a material breach of this Agreement and fails to remedy the breach within 10 (ten) Business Days of receipt from the contractor calling upon it to do so or;
- Commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 30 (thirty) Business Days after receipt from the contractor of notice calling upon it to do so, then contractor will be entitled, in addition to and without prejudice to any other right it may have in law to enforce specific performance in the terms of this Agreement or to cancel the Agreement forthwith and in either event to recover such damages as it may have sustained.

### 37. General

No act of relaxation on the part of the customer regarding the carrying out of any of the contractor's obligations in terms of this Agreement shall prejudice or be deemed to be a waiver of any of the customer's rights and terms hereof.

- No act of relaxation on the part of the contractor regarding the carrying out of any of the customer's obligations in terms of this Agreement shall prejudice or be deemed to be a waiver of any of the contractor'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

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## BUDGET & TREASURY DEPARTMENT

PROVINCE OF KWAZULU-NATAL  
KZN 435

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 16<sup>th</sup> DAY OF February 2022

Z.S. SIKHOSANA

Name

[Signature]  
In his capacity as the ULM Municipal Manager

Witness

1. T. NGCemu  
Name Signature

Witness

2. S. Dlomo  
Name Signature

SIGNED BY THE Contractor AT UMZIMKHULU THIS 15 DAY OF  
FEBRUARY 2022

DIRECTOR  
Managing Member Name

Vuyani Mkhulisi

Witness

1. P. Hlule  
Name Signature

[Signature]

Witness

2. Nema C. Hlunu  
Name Signature

[Signature]

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PROVINCE OF KWAZULU-NATAL  
KZN 435