



SERVICE LEVEL AGREEMENT

SETSOTO LOCAL MUNICIPALITY

and

OLE POWER SYSTEM PTY LTD.

PROJECT: PROVISION OF SMART METERING AND ENERGY SAVING SOLUTION IN ALL FOUR UNITS OF SETSOTO MUNICIPALITY – FUNDING, SUPPLY, MANAGEMENT & MAINTENANCE OF PREPAID ELECTRICITY METERING AND VENDING PLUS BULK METERS REQUIREMENTS

TENDER NO: RFP 09 (15/16)

CONTRACT MANAGEMENT TEAM:

GT Banda - Director;

F Viljoen - Project Management

CONTACTS: 051 933 9335

SETSOTO LOCAL MUNICIPALITY

OLE POWER SYSTEM

STR

SERVICE LEVEL AGREEMENT

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ENTERED INTO BY AND BETWEEN

SETSOTO LOCAL MUNICIPALITY

(VAT Registration Number: 4000846511)

A Local municipality incorporated in terms of the Laws of the Republic of South Africa, duly represented by **Mr Simon Tshepiso Rankgotho Ramakarane** in his capacity as the Municipal Manager and Accounting Officer.

(Hereinafter referred to as the "Municipality")

and

OLE POWER SYSTEM (PTY) LTD

A Utilities Metering Solutions Private Company in the Republic of South Africa duly represented by **Mr Oupa Peter Moumakwe** in his capacity as the Managing Director of the Company.

(Hereinafter referred to as the "Service Provider")

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1. PURPOSE

- 1.1 The municipality has awarded a bid described as the Provision of smart metering and energy saving solution in all four units of Setsoto Municipality – funding, supply, management & maintenance of prepaid electricity metering and vending plus bulk meters requirements over a period of four years commencing on 30 November 2016 notwithstanding date of signature hereof with reference number RFP09 (2015/2016);
- 1.2 The service provider has duly accepted the said award in a letter of acceptance.

2. DEFINITIONS

- 2.1 In this agreement unless inconsistent with or otherwise indicated by the context, the following words shall have the meaning assigned to them in this clause and the cognate meaning shall have a corresponding meaning.

2.1.1 **"Agreement"** means this agreement and any Annexures and schedules attached hereto;

2.1.2 **"Business Day"** means any day which is not a Saturday, Sunday or public holiday recognized as such under the Public Holidays Act, (Act 36 of 1994);

3.1.3 **"Bid Documents"** includes all documents that forms part of the bid, which includes Invitation to bid, Tax clearance certificate, Pricing schedule(s), Filled in task directive/proposal, Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations, Declaration of interest, Declaration of bidder's past SCM practices, Certificate of Independent Bid Determination, Special Conditions of Contract, General Conditions of Contract; and Other (specify

3.1.4 **"Deliverables"** means any system, duty, obligation, service, task, action, products, information, documents, program, advice, recommendation, report or disclosure required to be rendered, undertaken, executed, delivered, furnished, provided, made, done and/or compiled by a Party in terms of this Agreement;

3.1.5 **"Delegated Official"** means an official delegated by the MUNICIPALITY to liaise with the SERVICE PROVIDER,

- 3.1.6 **"Effective date"** means 30 November 2016;
- 3.1.7 **"Force Majeure"** means any inability, on the part of any of the Parties, to perform any of its obligations in terms of this Agreement due to an event which was beyond its control, these events include, but not limited to, war, civil war, armed conflict or terrorism, natural disasters such as violent storms, floods, earthquakes, destruction by lightning; explosions and fires;
- 3.1.8 **"Municipality"** means Setsoto Local Municipality being a local municipality;
- 3.1.9 **"Month/monthly"** shall mean a calendar month, and more specifically a calendar month commencing on that date or same date of any subsequent month thereafter;
- 3.1.10 **"Parties"** means the parties to this agreement;
- 3.1.11 **"Persons under the control of the Service Provider"** means any person being an employee, partner, director, shareholder or legal person under the control of the Service Provider, or a person acting on behalf of or with the knowledge of the Service Provider;
- 3.1.12 **"Services"** means the scope of work as set out in this agreement, bid document and any attached Annexure;
- 3.1.13 **"Service Provider"** means **Ole Power System (Pty) Ltd**, an Energy metering Solutions company.

4 INTERPRETATION

- 4.1 In constructing this agreement and all related written instruments thereof, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the terms of this agreement.
- 4.2 If, however, the ordinary sense of the word leads to some absurdity or some repugnancy or inconsistency with the rest of the terms of this agreement, then the words may be modified just so much as to avoid that absurdity, or repugnancy or inconsistency but no more.

- 4.3 Should clauses 4.1 and 4.2 be applied and fail to assist in the interpretation of this agreement then, the interpretation that will put an equitable construction upon this agreement and will not, unless the intention of the parties is manifest, so construe the agreement as to give one of the parties an unfair or unreasonable advantage over the other should be explored.
- 4.4 However general the expressions in this agreement may be, they only include the matters in respect of which it appears that the contracting parties intend to contract and not those which they did not contemplate.
- 4.5 Reference to one gender includes the other gender, singular includes the plural and *vice versa*.
- 4.6 The words "including" and "in particular" shall not limit the generality of any preceding words.
- 4.7 Where the approval or consent of any party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not be unreasonably withheld or delayed by the Party who is required to give same.
- 4.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 4.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 4.10 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 4.11 Any reference to "days" shall be construed as being a reference to calendar days, unless qualified by the word "Business".
- 4.12 The words "shall", "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same peremptory meaning.

5 AGREEMENT AND DELIVERABLES AND SERVICE PROVIDER'S OBLIGATIONS

Service Providers Obligation

5.1 5.1.1 The parties herein enter into an agreement in terms of which the service provider shall provide a smart metering and prepaid vending system & services including the meters and bulk meters to be funded from savings from the system.

5.1.2 The service provider shall furnish the municipality with a valid tax invoice accompanied by substantiating documentation of such invoice relating to the fulfilment and deliverables stipulated in the contract and bid documents

5.2 The parties specifically record that:

5.2.1 They do not envisage the relationship that is created by this agreement to be a partnership or contract of employment;

5.2.2 The service provider will not be entitled to any benefit of whatever nature that employees of the municipality may be contractually or in equity be entitled to; and,

5.2.3 The quality of the service/s or level/s upon which the services are to be provided must be of high standard, ethically and otherwise

5.2.4 Standards on turnaround time in the event of service breakdowns to be attended to must be agreed upon.

5.2.5 All equipment and information of under this contract becomes the property of the municipality after the conclusion of the contract.

6 MUNICIPALITY'S OBLIGATIONS

The Municipality is obliged to:

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- 6.1 Provide customer and other information as well as access that may be to functionalize the smart metering system for the municipality.
- 6.2 Scrutinize the invoice for correctness and make relevant and necessary payments, funded from demonstrated and proven savings realised as per submission against targeted deliverables.

7 DURATION

- 7.1 This agreement shall be binding to the parties from the effective date and shall continue for a period of four years starting 30 November 2016 to 29 November 2020. Thereafter this agreement will automatically come to an end, save for any extensions or variations and/or amendments agreed by the parties in writing.
- 7.2 An extension will only be considered in terms of the intended savings, funding the system and in terms of supply chain management prescripts.

8. Payment

- 8.1 The method and conditions of payment to be made to the supplier under this contract shall be by electronic funds transfer or otherwise by prior notification to the supplier.
- 8.2. The service provider's invoice as in item 5.1.2 shall be the primary document on which payment will be verified and paid.
- 8.3. Payments shall be made promptly by the municipality, but in no case later than thirty (30) days after submission of an invoice of claim by the service provider unless otherwise reported to the service provider
- 8.4 Payment will be based on proven demonstrated savings realised that that is linked to the funding of the product and service.

9. Prices

9.1 Prices charged by the service provider for 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 bid submission or request for bid validity extension or higher than the professional body or treasury tariffs.

10. MANAGEMENT, COMMUNICATION AND REPORTING

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

10.2 Matters of mutual interest will be discussed and decided on from time to time at these meetings as well as operational procedures, service levels and performance measurements may be revised here.

11. CONFIDENTIALITY

11.1 Both parties acknowledge that in their dealings with each other they may come across confidential information which may, if disclosed, compromise the business of the other party and that they (parties) herein undertake not to disclose such information to any third party, save where such disclosure is authorized by law or by written consent from the other party.

11.2 This clause shall continue to be binding on the parties despite any termination or cancellation of this agreement or any part thereof.

12. BREACH, LIMITATION OF LIABILITY & PENALTIES

12.1 The responsibilities and obligations imposed to and undertakings made by the parties in terms hereof are meant to be performed and if they are not performed at all, performed late or performed in the wrong manner that would constitute breach to this agreement.

12.2 Should breach contemplated in this clause occur, the aggrieved party shall, if that breach is material:

- i. debit the amount equivalent to services that should have been rendered at the time of breach from the total amount that is due for that period;
- ii. serve the defaulting party with a written notice of the default and demand the defaulting party to make good the default within seven working (7) days;
- iii. claim immediate performance by the defaulting party of all of its obligations that are due for performance and which are the subject of the breach;
- iv. claim damages, if there are any damages sustained by that other party due to the default; and
- v. exercise rights provided for in clause 13, if the defaulting party failed to remedy the default within seven (7) days on receipt of a notice contemplated in this clause.

A Party shall not be liable for breach in terms hereof, if it establishes to the satisfaction of the other party that such breach was due to *force majeure*.

12.3. All penalties shall be dealt with in terms of the Conventional Penalties Act 15 of 1962. Penalties shall be imposed for poor services, late performances and or wrong performance.

12.4. The maximum aggregate liability under this agreement for each party, for all claims, from any source whatsoever ("Maximum Liability"), arising as a result of foreseeable loss or direct damages suffered by any other party in connection with this agreement, due to any act or omission by any other party, shall be limited to the amount of cost for restoration of the service breakdown for the municipality by the service provider and no greater than the amount set out in clause 8.1 per incident above by the municipality for the service provider.

13. DISPUTES

13.1. The parties undertake to resolve any dispute arising out of the implementation or interpretation of this agreement amicably by negotiating, if attempts to do so within seven (7) days fail, then by way of mediation.

13.2. The decision of the mediator shall be binding upon the parties and the cost of the mediation thereof shall be determined by the mediator himself or herself.

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13.3. In the event the dispute concerns an amount claimed by the municipality and the service provider fails to rectify the dispute, the municipality shall be entitled to deduct the disputed amount from the amount payable in terms of the invoice for the following billing period and the amount may then be referred to mediation.

13.4. The parties agree that should the dispute relate to finance the mediator shall be an independent accountant of not less than ten (10) years in practice as selected by the chairperson of the Board of South African Institute of Chartered Accountants. Where a dispute relates to the interpretation of the clause/s of this agreement the mediator shall be an attorney or advocate of not more than ten (10) years in practice as selected by the chairperson of the Law Society of South Africa or the Bar Council in case of an advocate.

13.5. The provisions of this clause shall not operate to prevent either party from seeking urgent interim relief, pending mediation, by way of interdict or other legal action.

14. TERMINATION

14.1 This agreement can only be terminated in the event of:

- i. default on the part of any of the contracting parties as provided for in clause 11,
- ii. Poor Performance after the service provider has been advised in writing of the failure to meet the duties and responsibilities, and given a reasonable period of time of at least seven (7) days to cure the poor performance.
- iii. the service provider instituting insolvency proceedings or has insolvency proceedings involuntarily instituted against it, and
- iv. "Force Majeure" if, as a result of "Force Majeure", the parties can no longer continue performing the obligation of the agreement or it would be undesirable to continue with the agreement.

iv. "Force Majeure" if, as a result of "Force Majeure", the parties can no longer continue performing the obligation of the agreement or it would be undesirable to continue with the agreement.

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v. any of the parties serving to the other party a written notice of termination for a period of six months prior to the termination.

15. AMENDMENTS/VARIATION

15.1 No addition to or variation, consensual cancellation or novation of this agreement and no waiver, cession, delegation or assignment of any right or obligation arising from this agreement or its breach or termination will be of any force or effect unless reduced into writing and signed by the parties or their duly authorised representatives.

16. DOMICILIUM CITANDI ET EXECUTANDI

16.1 Any notice in terms of this agreement will be delivered to the physical addresses of the parties, or will be sent by registered post to the postal addresses of the party to whom it is addressed.

16.2 Any notice will be deemed to have been received by the party to whom it is addressed or delivered when receipt thereof is acknowledged by means of a signed delivery note.

16.3 Any notice delivered by hand to the party shall be deemed to have been delivered on the day of delivery. Any notice sent by registered post shall be deemed to have been received within seven (7) days from the date on which it was posted, and any notice sent by fax to a Party at the telefax numbers specified, shall be deemed to have been received within one (1) hours transmission if it is transmitted during normal business hours, and if also confirmed by the other party.

16.4 Either Party may from time to time decide to vary its *domicilium*, address or fax number by giving written notice to the other Party.

i. Street Address: Setsoto Local Municipality
27 Voortrekker Street
FICKSBURG
9730

ii. Postal Address: PO Box116
Ficksburg
9730

iii. Fax : 051 933 9383

b. The service provider chooses for the purposes of this agreement its *domicilium citandi et executandi* and address for any notices as follows:

i. Street Address : 164 JW Mushet Street
VANDERBIJLPARK
VEREENIGING
1911

ii. Postal Address : P.O Box 1209
ALBERTON
1450

iii. Tel: 016 931 0707

iv. Fax : 016 931 0999

17. JURISDICTION

17.1 The parties hereby consent to the Ficksburg jurisdiction of the Magistrates Court of South Africa located in the Free State Province.

18. GENERAL

18.1 This agreement is the whole agreement between the parties in regard to its subject matter. No party shall be bound by any express, implied or tacit term, representation, warranty, promise or the like, not recorded in writing in this agreement and its annexure.

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18.2 All signed written correspondence, including faxes and e-mail especially the bid document, received and consented to from either party will be regarded as binding to the party whom he she presents. Certain correspondences will be required on the official letterhead from both parties.

18.2 Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

18.3 This agreement is governed by South African law, without giving effect to any conflict of laws;

18.4 The relationship between the parties shall be one of the utmost good faith and each party undertakes to observe the utmost good faith towards the other parties.

SIGNED at FICKSBURG on this 5th day of JUNE 2017

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MR. STR RAMAKARANE
MUNICIPAL MANAGER

AS WTINESSES:

(1) _____

NAME: _____

(2) _____

NAME: _____

SIGNED at _____ on this _____ day of _____ 2017

MR. OP MOUMAKWE
MANAGING SIRECTOR

AS WTINESSES:

(1) _____

NAME: _____

(2) _____

NAME: _____