



SERVICE LEVEL AGREEMENT

SETSOTO LOCAL MUNICIPALITY and GWABENI INCORPORATED

PROJECT: APPOINTMENT OF A LAW FIRM OR ATTORNEYS TO SERVE IN A PANEL OF ATTORNEYS FOR A PERIOD OF 3 YEARS, ON AN "AS AND WHEN" REQUIRED BASIS.

CONTRACT MANAGEMENT TEAM:

SG SKOZANA - ACTING DIRECTOR: CORPORATE SERVICES

MP KOALANE – MANAGER: LEGAL SERVICES

TM NTJANA - CONTRACTS OFFICER

CONTACTS: 051 933 9367/14/9453

Jan DZ MPK STR
ME
SM

SERVICE LEVEL AGREEMENT

Entered into by and between:

SETSOTO LOCAL MUNICIPALITY

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

(Hereinafter referred to as "the Municipality")

AND

GWABENI INCORPORATED

(hereinafter referred to as "the Attorneys")

Herein represented by Mr. SAKHEPHI MIGHTY GWABENI in his capacity as Director at GWABENI INCORPORATED, being duly authorized thereto

for *MB* *M.P.K STR*
0.2 *S.M*

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1. PARTIES

1.1 The parties to this agreement are SETSOTO LOCAL MUNICIPALITY, a Local Municipality incorporated in terms of the laws of the Republic of South Africa, duly represented by Mr. Simon Tshepiso Ramakarane, in his capacity as Municipal Manager and Accounting Officer, and GWABENI INCORPORATED, herein represented by Mr. SAKHEPHI MIGHTY GWABENI, in his capacity as Director at GWABENI INCORPORATED, being duly authorized thereto.

1.2 Both the Municipality and the Attorneys shall hereinafter be referred to as the Parties.

2. PURPOSE

2.1 The Municipality has awarded a bid for appointment of a Law Firm or Attorneys to serve on a panel of Attorneys for a period of three years on an as and when required basis.

2.2 The Attorneys have duly accepted the said award.

3. DEFINITIONS

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

3.1.1 "Agreement" means this service level agreement and any Annexures and schedules attached hereto;

3.1.2 "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 form part of the bid, which includes Invitation to bid, a valid Company Tax Clearance Certificate, CSD report, valid Fidelity Fund Certificate, certified copies of all directors' identity documents, Municipal rates and taxes of the law firm, certified copy of B-BBEE, MBD, CVs of registered attorneys to be deployed on Setsoto Municipality's assignments,

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 Attorneys, also referred to as the project manager or his director;

3.1.6 "Effective date" means the 11th June 2019;

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

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which was beyond its control. These events include but are 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 "Legal services" means but would not be limited to, representation for litigation proceedings, legal advice / opinion, legal reviews, representation for internal and external labour matters and any other matter of a legal nature referred to the Attorneys by the Municipality on an "as and when required basis".

3.1.9 "Municipality" means Setsoto Local Municipality

3.1.10 "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;

3.1.11 "Parties" means the parties to this agreement;

3.1.12 "Persons under the control of the Attorneys" means any person being an employee, partner, director, shareholder or legal person under the control of the Attorneys, or a person acting on behalf of, or with the knowledge of the Attorneys

3.1.13 "The Attorneys" means GWABENI INCORPORATED

3.1.14 "Services" means the scope of work as set out in this agreement, bid document and any attached Annexure

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 only to the extent of avoiding 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,

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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 day 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, DELIVERABLES AND THE ATTORNEYS' OBLIGATIONS

5.1 The Attorneys' Obligation

5.1.1 The parties herein enter into an agreement in terms of which the Attorneys will serve in a panel of Attorneys for Setsoto Local Municipality, for a period of three years, providing legal services on an "as and when required basis".

5.1.2 The legal services provided will include but not be limited to, representation for litigation proceedings, legal advice / opinion, legal reviews, representation for internal and external labour matters and any other matter of a legal nature referred to the Attorneys by the Municipality on an "as and when required basis".

5.1.2 The Attorneys shall furnish the Municipality with a valid tax invoice accompanied by substantiating documentation of such invoice, relating to the fulfillment and deliverables as stipulated in the contract and bid documents.

5.2 The Parties specifically record that:

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- 5.2.1 They do not envisage that the relationship that is created by this agreement is to be a partnership or a contract of employment;
- 5.2.2 The Attorneys 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 a high standard, ethically and otherwise
- 5.2.4 The Attorneys undertake to act honestly, fairly, and with due skill, care and diligence, in the interests of Setsoto Local Municipality
- 5.2.5 The Municipality shall not be held liable for any injury, loss or damage directly or indirectly incurred by the Attorneys, as independent contractors, arising out of or in connection with the services rendered by the supplier in accordance with this agreement.

6. MUNICIPALITY'S OBLIGATIONS

- 6.1 The Municipality is obliged to make relevant and necessary payments for the services rendered by the Attorneys, in accordance with the completed and approved service deliverables

7. DURATION

- 7.1 This agreement shall be binding on the parties from the effective date, and shall continue for a period of three years starting 11 June 2019 to 10 June 2022. Thereafter this agreement will automatically come to an end, save for any extensions or variations and/or amendments agreed to by the parties in writing.
- 7.2 An extension will only be considered in terms of the Municipality's supply chain management prescripts.

8. PAYMENT

- 8.1 The Municipality shall pay the Attorneys within thirty (30) days upon receipt of a valid tax invoice, where this obligation shall not be met the Municipality shall communicate to the supplier the earliest date of payment.
- 8.2 E-mailed tax invoices will be accepted.
- 8.3 The Municipality will pay the Attorneys on the Legal Practice Council tariffs (unless otherwise as agreed upon by the Parties).
- 8.4 The Municipality will verify the correctness of the tax invoice and notify the Attorneys of any possible discrepancies prior to the payment being made.

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8.5 The Attorneys' invoice as in item 5.1.2 shall be the primary document on which payment will be verified and paid

8.6 The method and conditions of payment to be made to the Attorneys under this Agreement shall be by electronic funds transfer or otherwise by prior notification to the Attorneys.

9. FEES

9.1 The fees charged by the Attorneys in litigation matters shall be as per the relevant Legal Practice Council scales (unless otherwise agreed upon). This will be inclusive of Labour Court and Labour Appeal Court matters.

9.2 The recommended tariffs for conveyancing matters as provided by the Legal Practice Council will apply.

9.2 Travel costs will be the responsibility of the Attorneys, unless the travel is requested by the Municipality.

10 DISBURSEMENTS

10.1 In the event of the Attorney/s requiring accommodation while attending to the Municipality's legal assignment, accommodation will be at a three-star hotel, on a bed and breakfast basis.

10.2 In the event of flight travel being required to attend to the Municipality's assignment, the Attorney/s shall travel Economy Class.

10.3 The Municipality shall also be invoiced for car hire costs, and other travel costs incurred by the Attorney/s in attending to a matter instructed by the Municipality.

11 MANAGEMENT, COMMUNICATION AND REPORTING

11.1 The Municipality, Attorneys 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.

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

12 CONFIDENTIALITY

12.1 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 (the 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.

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

13 BREACH, LIMITATION OF LIABILITY & PENALTIES

13.1 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 only in part or in a wrong manner, that would constitute breach of this agreement.

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

- i. Serve the defaulting party with a written notice of the default and demand the defaulting party to make good the default within fourteen (14) working days;
- ii. 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;
- iii. Claim damages, if there are any damages sustained by that other party due to the fault; and
- iv. 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
- v. 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;

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*.

14 DISPUTES

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

14.2 The decision of the mediator shall be binding upon the Parties and the cost of the mediation shall be determined by the mediator himself.

14.3 In the event the dispute concerns an amount claimed by the Municipality and the Attorneys fail 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.

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14.4 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 Chattered 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.

14.5 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.

15 TERMINATION

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

- i. Default on the part of any of the Parties as provided for in clause 13,
- ii. Poor performance after the Attorneys have 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 Attorneys instituting insolvency proceedings or has insolvency proceedings involuntarily instituted against them, 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.
- v. Any of the parties serving to the other party a written notice of termination for a period of three months prior to the termination.

16 AMENDMENTS/VARIATION

16.1 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 authorized.

17 DOMICILIUM CITANDI ET EXECUTANDI

17.1 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 address of the party to whom it is addressed.

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

17.3 Any notice delivered by hand to the party shall be deemed to have been delivered


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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) hour transmission if it is transmitted during normal business hours, and if also confirmed by the other party.

- 17.4 Either party may from time to time decide to vary its *domicilium*, address or fax number by giving written notice to the other Party.
- 17.5 The Municipality chooses for the purposes of this agreement its *domicilium citandi ex executandi* address for any notices as follows:

- | | | |
|------|-------------------|--|
| i. | Street Address: | Setsoto Local Municipality
27 Voortrekker Street
FICKSBURG
9730 |
| ii. | Postal Address: | P.O Box 116
FICKSBURG
9730 |
| iii. | E-mail: | matshediso@setsoto.co.za

maxwell@setsoto.co.za |
| iv. | Telephone number: | (051) 933 9367 / 9314 |

(b.) The Attorneys choose for the purposes of this agreement their *domicilium citandi ex executandi* and address for any notices as follows:

- | | | |
|------|-----------------|---|
| i. | Street Address: | Suite 6B
Victoria Road Office Park
72 Victoria Road
Bloemfontein
9300 |
| ii. | Postal Address: | P.O Box 1800
Pretoria
0001 |
| iii. | Tel: | (051) 1100 410 |
| v. | Fax: | (051) 1100 411 |

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vi. Cellphone number: 081 311 7570 / 083 248 7403

vii. E-mail address: reception@gwabeniinc.co.za

18 JURISDICTION

18.1 The parties hereby consent to the jurisdiction of the Magistrate Court of South Africa located in Ficksburg.

19 GENERAL

19.1 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.

19.2 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.

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

19.4 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 party.

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20. SIGNATURES:

SIGNED AT Ficksburg ON THIS 29th DAY OF JULY
2019

20.1 For SETSOTO Local municipality



MR. STR RAMAKARANE (signature)
MUNICIPAL MANAGER


AS WITNESSES

(1)  _____ NAME: M.P. KOALANE

(2)  _____ NAME: T.M. MTJANA


SIGNED at Bloemfontein on this 16 day of July 2019

20.2 For GWABENI INCORPORATED



MR. S.M GWABENI
DIRECTOR: GWABENI INCORPORATED

AS WITNESSES

(1)  _____ NAME: M. MATHAPELO

(2)  _____ NAME: ZUKISWA