

## SERVICE LEVEL AGREEMENT

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

TANDIBRITE (PTY) LTD

A limited company incorporated in terms of the laws of the Republic of South Africa with registration number (2004/039016/23) duly represented by **Mr. Lebohang Barnard Rahlaho** (ID No: 7707095208081) in her capacity as the Managing Director of the said limited Company .

(Hereinafter referred to as the "Service Provider")

### 1. PARTIES AND DOMICILE ADDRESSES

- 1.1 The Setsoto Local Municipality with principal place of business at 27 Voortrekker Street, Ficksburg.  
Tel:051 933 9300
- 1.2 Tendibrite (PTY) LTD with principal place of business at Site 4, Factory 54, Industrial Area 1, Elizabeth Street, Phuthaditjhaba, 9866

### 2. INTRODUCTION

- 2.1 The Municipality has awarded a bid described for the Supply, Delivery and offloading of Cold Mix Asphalt 25 Kg Bags on as and when required for a period of three years, commencing on the 16<sup>th</sup> of August 2016
- 2.2 The Service Provider has duly accepted the said award in a letter of acceptance dated 04 August 2016

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1. DEFINITIONS

- 1.1 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.
- 1.1.1 **“Agreement”** means this agreement and any Annexures and schedules attached hereto;
  - 1.1.2 **“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 2011, 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 16 August 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;

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- 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 **Tandibrite (Pty) Ltd**, a private company with registration number 2015/170218/07 & VAT registration number: 4330270887

**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.

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- 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. Conditions and procedures**
- 5.1 Orders**  
Materials shall be delivered only upon receipt of a written official order from Municipality, and accounts shall be rendered as indicated on the official order or in the contract, as the case may be. Municipality retains the right to withhold payment on any transaction not initiated with an order unless otherwise agreed.
- 5.2 Packaging and transport**  
The Supplier is responsible for ensuring that Materials to be transported are properly packed for transport. Any special packing requirements such as palletizing/containerization, etc. shall be provided by the Supplier.
- 5.3 Technical, Safety and Storage**
- 5.3.1 The Supplier shall take all reasonable measures prescribed by law and/or any other reasonable measures necessary for the prevention of accidents in its performance at Setsoto Local Municipality's premises or any other premises designated by Setsoto Local Municipality.
- 5.3.2 The Supplier shall, where applicable, inform Municipality in writing of any valid safety precautions and shall ensure that personnel of the Supplier responsible for safety matters are present during the period of service contract.
- 5.4 Documentation**
- 5.4.1 The Supplier warrants that all documentation required in connection with the supply and delivery of the Materials shall be available at the time of delivery.

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**5.5 Compliance with Laws**

The Supplier hereby indemnifies and agrees to defend and hold Municipality harmless from any liability arising or alleged to arise out of any failure of the Material to conform to any laws, orders, requirements or standards. The Supplier shall bear any cost of inspection of the Material if so required.

**5.5.1 Transfer of Risk:**

- i. The Supplier will be responsible for the physical security of all Materials up to the point where all conditions of delivery has been met as per the conditions of contract and/or order.

**5.6 Quality**

Material supplied shall be in accordance with, and the Supplier guarantees that they are equal in all respects to, the samples, mix design specifications stipulated in the contract or order and unless otherwise specified, Material must be new and unused. Where manufactured dates, expiring dates and special brands are specified shall be supplied unless Municipality agrees otherwise.

**5.7 Guarantee**

5.7.1 Unless the Contract stipulates otherwise, the Supplier shall guarantee for a period of Thirty Six months that no faulty material or workmanship will be used in the manufacture of product or in the execution of services. Should the guarantee not be complied with, Municipality may, without prejudice to any other rights it may have at law, demand that the Materials be replaced without cost to Municipality.

5.7.2 The period of guarantee shall commence on the date of delivery or service is brought into commission, as determined by the contract and/or order.

5.7.3 The liability of the Supplier under the guarantee shall *inter alia* also cover the free delivery of Material required in replacement of defective Material.

**5.8 Payment for goods and services**

5.8.1 Municipality reserves the right to pay for Materials after the date of delivery. Municipality will pay for supply and delivery of Materials within 30 days of date of statement, unless otherwise agreed upon in writing.

**5.9 Inspections, tests and analyses**

5.9.1 Setsoto Local Municipality would at any given time require to conduct a quality control inspection on material supplied at the supplier's premises. The Supplier shall be open, at all reasonable hours, for inspection by a representative of Setsoto Local Municipality.

5.9.2 The inspections, tests and analyses may be carried out prior to dispatch in regard to such delivery as may be deemed necessary by Municipality. The Supplier shall provide, if required, all the required facilities for the inspections, tests and analyses of the Materials free of charge to Municipality and shall, if required, provide all the materials and samples for the purpose of such inspections, tests and analyses free of charge unless otherwise specified.

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- 5.9.3 If there are no inspection requirement in the tender specifications and no mention thereof is made in the letters of acceptance, but during the contract period it is decided that inspections shall be carried out, Municipality shall effect the necessary arrangements, including payment arrangements, with the testing authority concerned.
- 5.9.4 If the inspections, tests and analyses referred to in the previous paragraphs show the Materials to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by Municipality; otherwise the cost shall be defrayed by the Supplier and Municipality shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Supplier under the contract or under any other contract.
- 5.9.5 Municipality reserves the right to inspect, test or analyse any Material on or after delivery. Municipality reserves the right to reject any Materials that do not, in Municipality's sole discretion, comply with the contractual requirements. Any Material that Municipality rejects for non-compliance with the contractual requirements shall be held at the cost and risk of the Supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with Material which do comply with the requirements of the Contract. Failing such removal, the rejected Material shall be returned at the Supplier's cost and risk. Should the Supplier fail to provide the substitute Materials forthwith, Municipality may, without giving the Supplier further opportunity to substitute the rejected Materials, procure such Material as may be necessary at the expense of the Supplier.
- 5.9.6 All costs and any other expenses with regard to the rejected Materials shall be refunded to Municipality by the Supplier.
- 5.9.7 The provisions of the paragraphs related to inspections, tests and analyses shall not prejudice the right of Municipality to cancel the Contract on account of a breach of the conditions thereof, or to call on the appropriate remedy.
- 5.10 Failure to comply with conditions and delayed execution**
- 5.10.1 Should the Supplier fail to comply with any of the conditions of a Contract, Municipality shall be entitled, without prejudice to any of its other rights, to cancel the Contract.
- 5.10.2 Upon any delay beyond the contract period in the case of a Supply, delivery and offloading of materials, Municipality shall, without canceling the Contract, be entitled, forthwith, to purchase Goods of a similar quality and up to the same quantity in substitution of the Materials not supplied in conformity with the Contract and to return any Materials delivered later at the Supplier's expense and risk, or forthwith to cancel the Contract and procure such Materials as may be required to complete the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.
- 5.10.3 Upon any delay beyond the contract period in the case of a service contract, Municipality shall, without prejudice to any other right and without canceling the Contract, be entitled, forthwith, to arrange for the execution of the service not rendered or not rendered in conformity with the Contract or to cancel the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.
- 5.10.4 In the event of Municipality availing itself of the remedies provided for in the previous paragraphs:
- the Supplier shall bear any adverse difference in price of the said Material and these amounts plus any other damages which may be suffered by Municipality (claims from road users due to damage on their vehicles), shall be paid by the Supplier to Municipality immediately on demand or Municipality may deduct such amounts from monies.

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**5.11 Breach**


If either Party breaches the Contract or these Terms and Conditions and fails to remedy such breach within fourteen (14) days of written notice from any other Party calling for the breach to be remedied, then the non-breaching Party shall be entitled, without prejudice to any other rights that it may have in law, whether under the Contract or otherwise, to cancel the Contract without notice or to claim immediate specific performance of all the defaulting Party's obligations, whether or not due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.

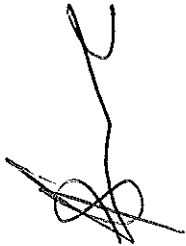
Dated at Ficksburg on this 19<sup>th</sup> day of SEPTEMBER 2016.

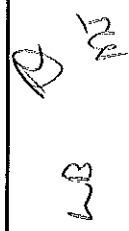
  
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MUNICIPAL MANAGER: SETSOTO LOCAL MUNICIPALITY

As WITNESSES:

1. T. Zondi   
Name & Signature

2. J. S. Mores   
Name & Signature



SETSOTO LOCAL MUNICIPALITY SERVICE LEVEL AGREEMENT (VERSION 1)

Supplier Acceptance:

I/we, the undersigned (Print name/s) LEBOHANG RAHMO

Hereby agree to these Service Level Agreement unless otherwise agreed with Setsoto Local Municipality.

[Signature]  
Signatures

19-09-2016

Date

DIRECTOR

Designation

(Please initial all other pages of this document)

1. J. LYNCH [Signature]  
Name & Signature

2. M. RUIE [Signature]  
Name & Signature