



## **SERVICE LEVEL AGREEMENT**

**MADE AND ENTERED INTO BY AND BETWEEN:**

**LEPHALALE LOCAL MUNICIPALITY  
BID NO: T10/2017-2018(Re-Advert)**

Represented herein by **Mapula Maria Cocquyt** duly authorised thereto  
(Hereinafter referred to as “**the Municipality**”)

And

**MANNA HOLDINGS (PTY) LTD**

Represented herein by **Nqole Arthur Lelosa** duly authorised thereto  
(Hereinafter referred to as “**Service Provider**”)

## **PREAMBLE**

**WHEREAS** Lephalale Local Municipality has invited tender for appointment of a suitable for the compilation of the general valuation roll and supplementary valuation roll for a period of five years;

**AND WHEREAS** Manna Holdings (Pty) Ltd) submitted a tender proposal to Lephalale Local Municipality;

**WHEREAS** the Municipality awarded Contract No.T10/2017-2018(Re-advert), to the service provider and, which tender was accepted, subject to certain terms and conditions;

**AND WHEREAS** the Service Provider agrees to provide such services with diligence and to the best of its abilities.

**AND WHEREAS** the Service Provider agreed to commence and complete the work as specified in this agreement

**WHEREAS** section 116 (1) of the Local Government: Municipal Finance Management Act, 2003, says: *A contract or agreement procured through the supply chain management system of a municipality or municipal entity must-*

- (a) *be in writing;*
- (b) *stipulate the terms and conditions of the contract or agreement, which must include provisions providing for-*
  - (i) *the termination of the contract or agreement in the case of non- or under-performance;*
  - (ii) *dispute resolution mechanisms to settle disputes between the parties and*
  - (iv) *any other matters that may be prescribed.*

**NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS;**

### **1 INTERPRETATION**

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention,

- 1.1 an expression which denotes -
  - 1.1.1 any gender includes the other gender;
  - 1.1.2 a natural person includes an artificial or juristic person and vice versa;
  - 1.1.3 the singular includes the plural and vice versa;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.2.1 **"this agreement"** – this agreement and all of the schedules, tender documentation, annexures or appendices thereto;
- 1.2.2 **"business day"** - any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.2.3 **"Service Provider"** means Manna Holdings (Pty) Ltd and includes the Service provider's Executors, Administrators, Trustees, Judicial Managers or Liquidators as the case may be, but not, except with the written consent of the Municipality, any assignee of the Contractor.
- 1.2.4 **"the Municipality"** – the Lephalale Municipality, established in terms of the Local Government Municipal Structures Act 117 of 1998, and all its assigns and other successors in title;
- 1.2.5 **"municipal area"**- the area of jurisdiction of the Municipality;
- 1.2.6 **"parties"** – the parties to this agreement is the Service Provider and the Municipality;
- 1.2.7 **"project commencement date"**- means that the project shall commence from the date of signature of this agreement;
- 1.2.8 **"project duration"** – means that the project will be for a period of five (5) years;
- 1.2.9 **"signature date"** - date of signature of this agreement by the signatory which signs it last;
- 1.2.10 **"tender"** includes the tender number T10/2017-2018(Re-advert)
- 1.2.11 **"tender documentation"** – includes the tender T10/2017-2018(Re-advert), together with all annexures to the tender document, submitted by the service provider and which forms an integral and material part of this agreement.
- 1.2.12 **"VAT"** - Value Added Tax in terms of the VAT Act;
- 1.2.13 **"VAT Act"** - Value Added Tax Act, No 89 of 1991, as amended;
- 1.2.14 **"event of force majeure"** shall mean any event or circumstance whatsoever which is not within the reasonable control of the affected party including any act of God, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, any requirement of any international authority, any act, omission or requirement of any government or other competent local

- authority, any promulgation, enactment or amendment of any Act, ordinance, regulation or by law, any court order, export control and shortage of transport facilities.
- 1.3 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the signature date, and as amended or substituted from time to time;
  - 1.4 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this agreement;
  - 1.5 where any term is defined within a particular clause other than this clause or the tender, that term shall bear the meaning ascribed to it in that clause or tender wherever it is used in this agreement;
  - 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;
  - 1.7 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
  - 1.8 any term which refers to a South African legal concept or process (for example, without limiting the a foregoing, winding-up or curator ship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this agreement may apply or to the laws of which a party may be or become subject;
  - 1.9 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
  - 1.10 This agreement supplements and amends the provisions of the tender documentation in certain respects. It is recorded and agreed that in the event of any conflict between the provisions or content of the tender documentation (of the one part) and this agreement (of the other part), this agreement shall prevail, unless the provisions of this agreement will lead to an absurdity or an increase in the tendered amount.
  - 1.11 The terms of this agreement having been negotiated, the contra preference rule shall not be applied in the interpretation of this agreement.

- 1.12 The tender document T10/2017-2018(Re-advert), completed, signed and submitted by the Service Provider together with all annexures thereto are incorporated in this agreement and form an integral part of this agreement.

## 2. IMPLEMENTATION OF THE PROJECT

- 2.1 The Service Provider shall implement and execute the project as set out in the tender specifications with specific reference to part F (Bid Specifications) of the tender, T10/2017-2018(Re-advert) and in accordance with all other relevant legislations and regulations. A copy of the tender document is attached hereto as **“Annexure B”**
- 2.2 The Service Provider binds itself to strict adherence to the Scope of Work, Bid specification, special specifications/conditions and all other lawful and reasonable instructions from the Municipality.

## 3. VALUE OF THE BID

The value of this contract shall be **R 2 500 000.00 (two million five hundred thousand rands only)** VAT and disbursement inclusive.

## 4. PAYMENT

- 4.1 Payment shall:

4.1.1 be authorised within thirty(30) days upon the Service Provider executing the service in terms of the agreement, read with the scope of work as outlined in the tender conditions and specifications and

4.1.2 be effected upon the Municipality issuing a certificate confirming that service was indeed rendered in terms of the scope of contract and related costs to that effect and further that the submission of an invoice bearing the company's letterhead.

- 4.2 MFMA, Lephalale Municipality Supply Chain Management Policy and other enabling legislation shall be used to regulate the manner of payment.

## 5. INDEMNITY

- 5.1 The Service Provider hereby holds harmless, indemnifies and shall defend the Municipality with respect to any and all claims, suits actions, costs, expenses, damages, liabilities, fines, penalties and assessments, including reimbursement of attorney's fees, which arise from, or relate to any act, misconduct or omission on the part of the service provider, its agents, employees or contractors whether or not such act or misconduct was wilful.
- 5.2 The provisions of this clause shall survive the termination of this Agreement.

## **6. EXTENT OF TERMS AND CONDITIONS**

- a. This Agreement consists of the terms and conditions set out in the documentation listed as follows:
- i) Letter of Appointment marked "Annexure A",
  - ii) Tender document BID no: T10/2017-2018(Re-advert) marked "Annexure B",
  - iii) This Agreement,
- b. It is recorded and agreed that in the event of any conflict between the provisions or content of the tender documentation (of the one part) and this agreement (of the other part), this agreement shall prevail, unless the provisions of this agreement will lead to an absurdity or an increase in the tendered amount.

## **7. BREACH**

- 7.1 Should any party fail to comply with any provision of this agreement, the affected party shall be entitled to notify the defaulting party of any such failure and should the defaulting party fail to rectify any such failure within fourteen (14) calendar days, calculated from the date of postage, by registered mail, of the affected party's notice, alternatively the date on which such notice was delivered by hand to the defaulting party's duly authorized official, the affected party may, in its discretion be entitled to:
- (a) cancel this agreement and claim damages
  - (b) Alternatively claim specific performance from the defaulting party in terms of this agreement.
- 7.2 In the event of cancellation, the affected Party shall be entitled to claim damages from the default Party, for damages which the affected party suffered as a result of the default Party's failure/neglect to comply with any provision of this agreement.

- 7.3 In the event of the affected Party deciding to hold the default Party bound hereunder and enforcing specific performance against him, all moneys owing by the default Party to the affected Party in terms of this agreement shall immediately become due and payable and the affected Party shall further be entitled to claim from the default Party all damages suffered by it as a result of the default Party's failure or neglect to comply with any of the provisions of this agreement.

## **8. PERFORMANCE**

It is a specific condition of this tender that the Service Provider is required to perform his task to acceptable standards and shall be obliged to meet the deadlines as determined by the parties.

Serious default of this contract shall include but not be limited to:

- Non compliance with the tender specifications/scope of work
- Breach of confidentiality and/or conflict of interest;
- Non-compliance with any relevant legislation/regulation and any other conditions referred to in this tender.

The Municipality shall in addition to any of its other rights to claim damages from the Service Provider and be entitled to enforce penalties.

## **9. DISPUTE RESOLUTIONS**

### **ARBITRATION**

#### **9.1 Disputes subject to arbitration**

Any dispute arising out of or in connection with this agreement or the subject matter of this agreement shall be decided by arbitration in terms of this clause, notwithstanding that the rest of the agreement may be void or voidable or may be terminated or been cancelled, this clause being separate and divisible from the rest of this agreement.

#### **9.2 Notice to state whether claim is disputed**

If any dispute arises in terms of this contract, either party may give fourteen (14) days written notice to the other of such dispute, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.

If the other party fails to do so within fourteen (14) days the affected party may proceed by way of litigation and if the other party then defends such

litigation the affected party may elect to continue with the litigation or to refer the matter to arbitration.

### **9.3 Appointment of arbitrator**

9.3.1 The parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within ten days after either party in writing calls for agreement, the arbitrator shall be an attorney or advocate nominated either by the Secretary of the Law Society or the Chairpersons of the Bar Council.

9.3.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other party who may, within twenty-one (21) days, submit written comments on the request to the addressor of the request.

### **9.4 Venue and period for completion of arbitration**

The arbitration shall be held in Lephalale or any other place as the Municipality may decide from time to time and the parties shall endeavour to ensure that it is completed within ninety days after notice requiring the claim to be referred to arbitration is given.

### **9.5 Arbitration Rules**

The arbitration shall be governed by the AFSA rules or any other rules that the parties or their representatives and arbitrator may agree upon.

### **9.6 Procedure**

The procedure to be followed in the arbitration shall be determined by the arbitrator, with due regard to this agreement.

### **9.7 Arbitrator's powers**

The arbitrator shall have the powers set out in the AFSA rules or as assigned to him/her by the parties in line with the Arbitration Act.



## **9.8 Award**

- 9.8.1 The arbitrator shall give written reasons for his award.
- 9.8.2 Any award made by the arbitrator shall be final and binding on the parties.
- 9.8.3 Any party will have the right to have the arbitration award made an order of court.
- 9.8.4 Any party will have the right to have the arbitration award taken for review to and by a court of competent jurisdiction

## **9.9 Consent and severability**

- 9.9.1 The provisions of this clause-
  - 9.9.1.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;
  - 9.9.1.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

## **10. INJUNCTIVE RELIEF**

Notwithstanding the provisions of this agreement or the tender, the parties agree that in the event of a breach of the terms of this agreement, the party aggrieved by such breach will be entitled to seek and obtain urgent injunctive relief in respect of such breach.

## **11 FORCE MAJEURE**

- 11.1 Should a party ("affected party") be prevented from fulfilling any of its obligations in terms of this agreement as a result of an event of force majeure, then –
  - 11.1.1 those obligations shall be deemed to have been suspended to the extent that and for so long as the affected party is so prevented from fulfilling them and the corresponding obligations of the other party ("unaffected party") shall be suspended to the corresponding extent;
  - 11.1.2 the affected party shall promptly notify the unaffected party in writing of such event of force majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of will endure.

- 11.2 Should the affected party partially or completely cease to be prevented from fulfilling its obligations by the event of force majeure, the affected party shall immediately give written notice to the unaffected party of such cessation and the affected party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other party has given written notice that it no longer requires such fulfilment, the affected party shall not be obliged to fulfil its suspended obligations and the unaffected party shall not be obliged to fulfil its corresponding obligations.
- 11.3 Should an event of force majeure continue for more than 180 days after the date of the notice, then either party shall be entitled (but not obliged) to terminate this agreement by giving not less than thirty days written notice to the other party to that effect.

## **12. COSTS**

In the event of either party having to institute legal proceedings against the other due to its breach of any term of the Contract, the defaulting party will be liable for payment of the other party's legal costs on a scale as between attorney and client.

## **13. DOMICILIUM CITANDI ET EXECUTANDI**

- 13.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows :-

### **The Municipality:**

Postal Address: Private Bag X 136  
Lephalale  
0555

Physical address: Lephalale Municipality  
Civic Centre  
Cnr. Douwater & Joe Slovo Avenue  
Onverwacht  
0557

Tel: 014 763 2193

Fax: 014 763 5662

**The Service Provider:**

Postal Address: P.O Box 14473  
Hatfield  
0028

Physical address: 30B Regency  
Corporate Park  
Irene  
0157

Tel: 012 345 3664

Fax: 012 345 2468

E-mail: info@mannaholdings.co.za

13.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.

13.3 Any notice given by either party to the other ("addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;

13.4 posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed to have been received by the addressee on the fourteenth day after the date of posting, unless the contrary is proved by the addressee.

13.5 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

13.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

#### **14. RESTRICTIONS ON CESSION OR ASSIGNMENT**

The Service Provider is not entitled to cede or assign any rights or obligations which it may have in terms of this agreement to any third party unless the prior written consent of the Municipality has been obtained.

#### **15. GENERAL**

15.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

15.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

15.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

15.4 Without prejudice to any other provision of this agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.

15.5 The signature by either party of a counterpart of this agreement shall be as effective as if that party had signed the same document as the other party.

15.6 If any provision of this agreement is held to be illegal, invalid or unenforceable for any reason, such provisions shall be deemed to be *pro non scripto*, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.

15.7 This agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa

APPOINTMENT OF SUITABLE SERVICES PROVIDER FOR THE COMPILATION OF THE GENERAL VALUATION ROLL AND SUPPLEMENTARY VALUATION ROLL FOR A PERIOD OF FIVE YEARS: MANNA HOLDINGS (PTY) LTD//LEPHALALE MUNICIPALITY

---

SIGNED AT LEPHALALE ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

\_\_\_\_\_  
The Municipality Represented  
herein by

FULL NAMES: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
FULL NAMES

\_\_\_\_\_  
FULL NAMES

SIGNED AT LEPHALALE ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019

\_\_\_\_\_  
The Service Provider  
Who warrants that he is duly authorized hereto.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
FULL NAMES

\_\_\_\_\_  
FULL NAMES

***“ ANNEXURE A ”***

***LETTER OF APPOINTMENT***

APPOINTMENT OF SUITABLE SERVICES PROVIDER FOR THE COMPILATION OF THE GENERAL VALUATION  
ROLL AND SUPPLEMENTARY VALUATION ROLL FOR A PERIOD OF FIVE YEARS: MANNA HOLDINGS (PTY)  
LTD//LEPHALALE MUNICIPALITY

---

***“ANNEXURE B”***

***TENDER DOCUMENT NO: T10/2017-2018(RE-ADVERT)***