

SERVICE LEVEL AGREEMENT

Entered by and between

THE GEORGE MUNICIPALITY

(Herein represented by Mr Trevor Botha in his capacity as Municipal Manager)

(Hereinafter referred to as "the George Municipality")

And

NCA SOLUTIONS (PTY) LTD

(Hereinafter referred to as "the Service Provider")

(Hereinafter represented by.....**NOLUTHANDO**)

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PREAMBLE:

- A. The George Municipality has appointed the Service Provider, for a period of five years, for the supply and delivery of fuel under Bid No ENG 14 OF 2017 (hereafter referred to as the "Services").
- B. The Service Provider has accepted such appointment and shall render the services to the George Municipality on the terms and conditions as set out in this Agreement, the tender specifications, the special conditions applicable to this tender, the stipulations in the Bid document and the appointment letter of 06 December 2017, which will form part of this agreement.

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

- 1.1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
 - 1.1.1. "Agreement" shall mean this Service Level Agreement, together with the bid documents, and any other annexures hereto, and "this Agreement" shall have a corresponding meaning;
 - 1.1.2. "Municipality" means the George Municipality;
 - 1.1.3. "Parties" means the Service Provider and the George Municipality; and
 - 1.1.4. "Signature Date" means the date on which this Agreement is signed by the party signing last in time.

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2. DURATION

The Services shall be rendered as follows:

A period of five years, starting from 01 January 2018.

3. THE SERVICES

- 3.1 The Service Provider shall render the services to the George Municipality, in accordance with the tender specifications, the special conditions applicable to this tender, the stipulations in the Bid document and on the terms and conditions set out in this Agreement.
- 3.2 The service delivery must take place Mondays to Fridays from 8h00 till 16h00 and within 2 working days of date of order.
- 3.3 The George Municipality must be informed by the Service Provider what the price of fuel will be every first Wednesday of the new month. The Service Provider will also provide George Municipality with a quote stating what the cost will be for George Municipality.
- 3.4 As there are two Service Providers, NCA Solutions (Pty) Ltd shall be responsible for the replacement of one of the two existing pumps with dual hose, dual product pumps of the same brand and manufacture. The brand must be compatible with the OTI PetroSmart fuel system.
- 3.5 NCA Solutions (Pty) Ltd will be jointly responsible, with the other appointed service provider, for the re-installation of the OTI PetroSmart Forecourt Pedestal.

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3.6 NCA Solutions (Pty) Ltd will be responsible for: -

- a. Vacusonic Testing
- b. Tank Integrity Test
- c. Meter Calibrations and accuracy testing
- d. Servicing
- e. Repairs & Maintenance of the pump

3.7 The new pump will be fully installed and operational by 01 March 2018.

3.8 A new fuel dipstick per product must be supplied by NCA Solutions (Pty) Ltd.

4. REPORTING AND LEVELS OF SERVICE TO BE RENDERED BY THE SERVICE PROVIDER

4.1 The Services referred to in clause 3 of this Agreement must be performed in a professional and impartial manner.

5. PAYMENT

5.1 The George Municipality shall pay the Service Provider, in accordance with the price schedule of this Agreement, within 30 (thirty) days of receipt of a detailed tax invoice, provided that the Services to which the tax invoice relates have been completed to the satisfaction of the George Municipality.

5.2 The following details must be reflected on the invoice forwarded to the George Municipality by the Service Provider:

5.2.1 The total amount payable regarding the activities and outputs referred to section 3 in of this Agreement, as well as details of time spent on such activities; and

5.2.2 VAT payable.

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- 5.3 The George Municipality will verify the correctness of an invoice, and notify the Service Provider of any possible discrepancies within 10 (ten) days of receipt of the invoice. If the invoice is correct the amount due shall be payable within 30 (thirty) days from receipt of the invoice.
- 5.4 If the George Municipality identifies any material discrepancies the invoice will be referred back to the Service Provider, and the amount due will be payable within 30 (thirty) days from receipt of a correct invoice, provided that the Services to which the relevant invoice relates has been achieved to the satisfaction of the George Municipality.
- 5.5 Payments by the George Municipality to the Service Provider shall be made into a bank account in South Africa, as identified in writing by the Service Provider to the George Municipality.
- 5.6 The George Municipality shall not reimburse the Service Provider for expenses such as parking, computer consumables, telephone calls, travel and accommodation costs that are incurred to render the Services.
- 6. INDEPENDENT CONTRACTOR**
- 6.1 The Service Provider is appointed as an independent contractor, and not as an employee, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the Parties.
- 6.2 This Agreement replaces any other previous verbal or written agreement entered between the Parties.
- 7. ENTIRE AGREEMENT**

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7.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.

7.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

8. WAIVER

8.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

8.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

8.3 No indulgence, leniency or extension of time which any Party (*"the Grantor"*) may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

9. CONFIDENTIAL INFORMATION

9.1 The Service Provider shall not, during the currency of this Agreement, or at any time thereafter, utilize or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be

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disclosed to any third party. any of the Confidential Information of the George Municipality, government in any other sphere, or any government institution or organ of state.

9.2 For purposes of this clause "Confidential Information" shall mean -

- 9.2.1 any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights, all trade secrets, all agreements (whether in writing or not) which exists at the time of revealing the content thereof to the Service Provider, the content of all possible future agreements which may be entered into with any other party. all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the George Municipality, government in any other sphere, or any government institution or organ of state;
- 9.2.2 any information of whatever nature, which has been or may be obtained by the Service Provider, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;
- 9.2.3 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the Service Provider

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which contain or otherwise reflect or are generated from any such information as is specified in this definition;

9.2.4 all information which a third party has in terms of any agreement made available to the George Municipality and which has become known to the Service Provider in the course of rendering the Services; and

9.2.5 any dispute between the Parties resulting from this Agreement;

9.3 The Service Provider shall -

9.3.1 use the Confidential Information only for rendering the Services;

9.3.2 treat and safeguard the Confidential Information as private and confidential; and

9.3.3 ensure proper and secure storage of all Confidential Information.

9.4 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are to be provided to the Service Provider or which come into the Service Provider's possession during the currency of this Agreement, are deemed to be the property of the George Municipality and shall be surrendered to the George Municipality on demand, and in the event of the expiry or termination of this Agreement, the Service Provider will not retain any copies thereof or extracts there from without obtaining the prior written permission of the George Municipality.

9.5 The Service Provider –

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- 9.5.1 acknowledges that he/she has carefully considered the provisions of the clause;
- 9.5.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the George Municipality and the Government of the Republic of South Africa and that if he/she should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on the Service Provider; and
- 9.5.3 acknowledges that he/she has entered into this Agreement freely and voluntarily and that no circumstances exist and/or existed for him/her alleging, either now or at any future time, that he was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the George Municipality in agreeing thereto.

10. BREACH

- 10.1 The George Municipality may through its employees ensure that all specifications as stipulated are adhered to. Within one (1) day of the receipt of notice in writing from the MUNICIPALITY calling upon it to do so, the Service Provider shall provide reason for failing to adhere to the specifications as stipulated herein.
- 10.2 Failing which the George Municipality shall be entitled to cancel and annul this contract without prejudice to the right of recovery from the Service Provider such amount in respect of loss or damage which the George Municipality may have sustained or expenses which may be entailed upon the George Municipality by reason of the failure of the Service Provider to

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observe and fulfill the conditions or performs or has performed unsatisfactorily under this contract.

11. DAMAGES IN LIEU OF PENALTIES

11.1 It is recorded and agreed that, in the event that the Service Provider fails to deliver goods or render services within the period stipulated in this Agreement, the George Municipality shall be entitled to impose penalties on the Service Provider, as set out in clause 22 and 23 of the GCC.

11.2 The George Municipality can also, as per the Tender specifications, claim a penalty of R1500.00 per day, for late deliveries.

11.2 The George Municipality's right to impose penalties shall not in any way detract from the Municipalities right to claim damages in lieu of penalties in the event of a breach by the Service Provider of any or all of the terms and conditions of this Agreement.

12. NOTICE AND DOMICILIUM

12.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in term of this Agreement, the following addresses:

THE GEORGE MUNICIPALITY:

Mr T Botha
Municipal Manager
George Municipality
69 York Street

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George
6530

THE SERVICE PROVIDER:

NCA Solutions (Pty) Ltd
758 Umnwabu and Imbulu Street
Kamagugu
Mbombela
1200

- 12.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 12.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) business days after the date of posting.
- 12.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

13. DISPUTE

In event of a dispute arise between the parties, it will be resolved as follows:

- 13.1 The parties hereby agree that in the event of a dispute arising out of this agreement then resolution of this dispute must be attempted by the way of consultation between the parties. If the consultation process does not lead

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to a resolution of the dispute, within 10 days, then the parties agree to refer the dispute for arbitration.

- 13.2 All arbitration proceedings shall be conducted in George. The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that if possible it shall be concluded within ten days of referral.
- 13.3 If the parties cannot agree on the appointed of an Arbitrator within three days after arbitration has been agreed upon, than the President for the time being of the Cape Bar Council will be requested to appoint the arbitrator.
- 13.4 The fees payable to the arbitrator shall be determined and agreed to between the arbitrator and the parties and the parties shall be jointly and severally liable for the payment of the arbitrator's fees. Any party may request the other party to deliver an acceptable guarantee or reasonable deposit for his portion of the cost.
- 13.5 The Arbitrator shall be requested to hand down his/her award within ten days after the completion of the arbitration.
- 13.6 The decision of the Arbitrator shall be final and binding and may be an order of the Cape of Good Hope Provincial Division of the High Court upon the application by and party to the arbitration.
14. **ASSIGNMENT, CESSION AND DELEGATION**

The Service Provider may not assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written

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consent of the Municipality, which consent shall not unreasonably be withheld or delayed.

15. INJURY OR DAMAGE TO PERSON OR PROPERTY

The Contractor shall indemnify and keep indemnified the Municipality against all losses and against all claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the Contractor or Contractor employees providing the services and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever, in respect thereof or in relation thereto.

16. ASSIGNMENT

Neither of the parties shall be entitled to cede its rights or assign its obligations in respect of this agreement without the prior written consent of other party, which consent shall not be unreasonably withheld.

17. FORCE MAJEURE

If *force majeure* causes delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement, shall be suspended for the period during which the *force majeure* prevails. Written notice of the *force majeure* specifying the nature and date of commencement thereof shall be dispatched by the party seeking to rely thereon to the other party as soon reasonably possible after the commencement thereof. Written notice of the cessation of the *force majeure* shall be given by the party who relied thereon within seven (7) days of such cessation. No party shall subsequently be obliged to comply with obligations suspended during such period. For purpose hereof, *force majeure* includes any laws or regulations having the force of law, civil strife,

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riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, flood, storm, fire (or without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of the party claiming *force majeure*.

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SIGNED AT George ON THIS 20th DAY OF December 2017


THE GEORGE MUNICIPALITY

AS WITNESSES:



Signature

NATASHA KOCK
Name also in capital letters



Signature

Samuel Buis
Name also in capital letters

SIGNED AT Nelspruit THIS 19 DAY OF December 2017




NCA SOLUTIONS (PTY) LTD

AS WITNESSES:



Signature

CYNTHIA
Name also in capital letters



Signature

JUSTICE
Name also in capital letters