

# **SERVICE LEVEL AGREEMENT**

Entered into by and between

## **THE GEORGE MUNICIPALITY**

(Herein represented by Mr SB Erasmus in his capacity as Director: Protection Services)

(Hereinafter referred to as "the George Municipality")

And

## **TOTAL COMPUTER SERVICES (PTY) LTD**

(Hereinafter referred to as "the Service Provider")

(Hereinafter represented by Mr. S.K. Mtuli)



Handwritten signatures of the parties. On the left is a large signature, likely for Mr. S.K. Mtuli. To its right are two smaller signatures, one above the other, likely for Mr. SB Erasmus. Further right is a large, stylized signature, possibly for another representative of the George Municipality.

**PREAMBLE:**

- A.** The George Municipality has appointed the Service Provider, for a period of three years for the SUPPLY, MAINTAIN AND UPDATE OF TRAFFIC AND LAW ENFORCEMENT CONTRAVENTION SYSTEM FOR A PERIOD OF THREE (3) YEARS under Bid No PS 028 of 2020 (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 25 February 2021, which will all 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.

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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.

## 2. DURATION

The Services shall be rendered as follows:

A period of three years, starting from: **01 March 2021**

## 3. THE SERVICES

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.

## 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.

4.2 The Service Provider will report directly to the Director: Protection Services, or his designated representative, and submit a monthly operational report.

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## 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 with reference to the activities and outputs referred to section 3 in of this Agreement, and
- 5.2.2 VAT payable.
- 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.

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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 in order 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 into between the Parties.

## 7. ENTIRE AGREEMENT

7.1 This Agreement, the tender specifications, the special conditions of this tender, the Bid document and the appointment letter, 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. In case of conflicting interpretation, the tender documents will take preference.

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.

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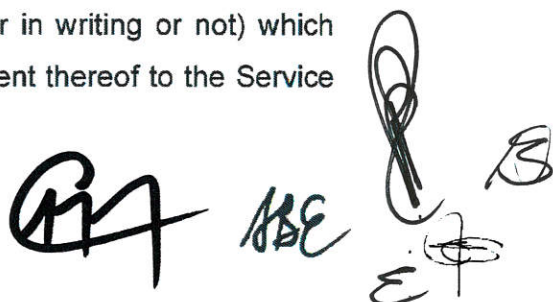


**8. WAIVER**

- 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, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be 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



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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 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.



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9.3 The Service Provider shall -

9.3.1 use the Confidential Information only for the purpose of 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 –

9.5.1 acknowledges that he/she has carefully considered the provisions of this agreement.

9.5.2 agrees that this agreement 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

Should a Party breach any or all of the terms and conditions of this Agreement, and remain in such breach 14 (fourteen) days after receipt of a written notice calling upon it to remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement, or to remedy the breach itself, and to impose penalties or claim damages in lieu of penalties, as contemplated in clause 11.



**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's right to impose penalties shall not in any way detract from the Municipality's 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 SB Erasmus**  
**Director: Protection Services**  
**George Municipality**  
**71 York Street**  
**George**  
**6530**

**THE SERVICE PROVIDER:**

**Mr. S. K. Mtuli**  
**Director: T.C.S.**  
**Total Computer Services (Pty)Ltd.**  
**106 Jean Avenue**  
**Centurion**  
**0157**

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

13.1 Without detracting from a party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 13.2 and 13.3.

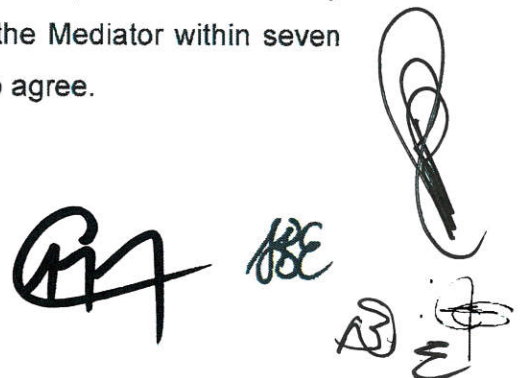
#### 13.2 Mediation

13.2.1 Subject to the provisions of clause 13.1, any dispute arising out of or in connection with this Agreement may be referred by the Parties without legal representation to a Mediator.

13.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.

13.2.3 The Mediator shall be selected by agreement between the Parties.

13.2.4 If an agreement cannot be reached upon a particular Mediator within three business days after the Parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the Mediator within seven business days after the Parties have failed to agree.



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- 13.2.5 The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.
- 13.2.6 The Parties shall have seven business days within which to finalise their representations. The Mediator shall within seven business days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.
- 13.2.7 The opinion so expressed by the Mediator shall be final and binding upon the Parties unless a Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 10. The expressed opinion of the Mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.
- 13.2.8 The cost of mediation shall be determined by the Mediator.
- 13.2.9 Liability for such cost shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.



**13.3 Arbitration**

13.3.1 Subject to the provisions of clause 13.1, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

13.3.2 Arbitration shall be held in George informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within ten business days.

13.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is:

- (a) Primarily a legal matter, a practicing Senior Advocate of the Cape Bar;
- (b) any other matter, an independent and suitably qualified person as may be agreed upon between the parties to the dispute.

13.3.4 If agreement cannot be reached on whether the question in dispute falls under 13.3.3(a) or 13.3.3(b) and/or upon a particular Arbitrator within three business days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall be requested to:

- (a) determine whether the question in dispute falls under 13.3.3(a) or 13.3.3(b); and/or
- (b) nominate the Arbitrator within seven days after the Parties have failed to agree.



- 13.3.5 The Arbitrator shall give his or her decision within five business days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both of the Parties.
- 13.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, upon the application by any party to the arbitration.
- 13.4 Notwithstanding the provisions contained in clause 28 of the GCC, disputes between the Parties shall be governed exclusively by, and settled in terms of, clauses 13.1 to 13.3 of this Service Level Agreement.

**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 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. ASSINGMENT**

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, 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*.





SIGNED AT GEORGE ON THIS 26<sup>th</sup> DAY OF FEBRUARY 2021

A.B. Erasmus  
THE GEORGE MUNICIPALITY

AS WITNESSES:

[Signature]  
Signature

WARREN MULLER  
Name also in capital letters

[Signature]  
Signature

LAURENT JANSEN  
Name also in capital letters

SIGNED AT CENTURION ON THIS 2<sup>ND</sup> DAY OF MARCH 2021  
[Signature]  
Total Computer Services (Pty) Ltd.

AS WITNESSES:

[Signature]  
Signature

DM BARKO  
Name also in capital letters

[Signature]  
Signature

EVELYN  
Name also in capital letters

<b>TCS</b>	
TOTAL COMPUTER SERVICES (PTY) LTD	
Company Reg-Number:	1979/005478/07
Tax Ref-Number:	9126026831
Vat Reg-Number:	4910117995
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0157	