

MEMORANDUM OF AGREEMENT

between

GEORGE MUNICIPALITY

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

("the Customer")

and

**BM SKILLS DEVELOPMENT & ZHUZH ADVERTISING AND PUBLISHING CC T/A
ROCK SOLID JV**

(herein represented by Mr Basil Myners, in his capacity as Director)

("the Service provider")

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1. PREAMBLE

WHEREAS: -

- 1.1 The Service provider has been awarded Tender PS030/2019 by the Customer to assist the Customer with professional communications and marketing activities for the GIPTN GO GEORGE project.
- 1.2 The Parties agree to the conclusion of this Business Agreement, which will consist of this Memorandum of Agreement together with the Annexures.
- 1.3 The parties wish to record in writing their agreement relating to the above and various matters incidental thereto.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

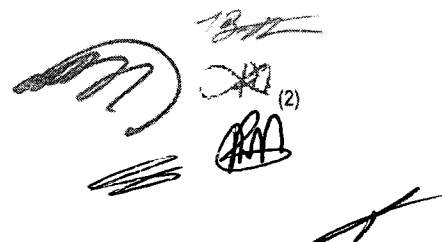
2. INTERPRETATION

- 2.1 In this Agreement and the Tender Documents, unless inconsistent with the context, the following words and expressions shall bear the following meanings –
 - 2.1.1 "Arbitrator" means the arbitrator appointed in terms of this Agreement;
 - 2.1.2 "Business Day" means any workday other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
 - 2.1.3 "Service provider" means BM Skills Development and Zhuzh Advertising and Publishing cc t/a Rock Solid JV;
 - 2.1.4 "Council" means the George Municipal Council;
 - 2.1.5 "Customer" means the George Municipality, of York Street, George, 6530;
 - 2.1.6 "GCC" means the General Conditions of Contract as prescribed by the National Treasury and further augmented by this Agreement and the Tender document;
 - 2.1.7 "GIPTN" means the George Integrated Public Transport Network (GO GEORGE);
 - 2.1.8 "GIPTN Management Committee" means the management committee consisting of key GIPTN project team members tasked with the governance of the GIPTN, including approval of reporting and invoice certification;
 - 2.1.9 "Parties" means the Service provider and the Customer or their duly authorised representatives;

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- 2.1.10 "Prime Rate" means a rate of interest per annum which is charged by the banking institution at which the primary bank account of the Municipality is held, as the minimum lending rate of interest per annum, compounded monthly in arrears on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector and as published from time to time;
- 2.1.11 "Services" means the assistance with communications and marketing activities which includes, but is not limited to, media liaison, social media interaction, publicity material, community engagements and advertising activities;
- 2.1.12 "Signature Date" in respect of this Agreement or of the annexures or schedules attached thereto means the actual date when the last party signing the respective documentation does so;
- 2.1.13 "Tender Document(s)" means, collectively, the original tender document issued by the Customer with Tender Specification PS 030/2019, and the Service provider's response thereto, which also include the pricing schedule and an addendum of the tender conditions and the appointment letter, of which documents are hereto annexed as marked "Tender Documentation", together with the correspondence and other questionnaires and replies in writing from the Service provider. All such documents and correspondence are annexed hereto as Annexure "A";
- 2.1.14 "This Agreement" means the Memorandum of Agreement together with the Annexures, which specifically include, but are not limited to, the Service provider's technical and financial proposals, and such other documents as agreed to from time to time, and "the Agreement" or "Business Agreement" shall have a corresponding meaning.
- 2.2 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate.
- 2.3 The head notes to the clauses to this Agreement, are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.4 This Agreement shall be binding on and enforceable by the administrators, receivers, trustees, assigns or liquidators of the Service provider as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party's administrators, receivers, trustees, assigns or liquidators, as the case may be.
- 2.5 If any provision in the preamble to this Agreement and/or if any provision in this clause two (2) is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the preamble and/or this clause two (2), as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

3. DURATION

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- 3.1 The parties hereby agree that this Agreement will commence on 1 October 2020 and will continue for a period of three years from the date of commencement.

4. KEY DELIVERABLES OF THIS AGREEMENT

- 4.1. Both Parties will endeavour to achieve the following key deliverables:
- 4.1.1 Effective and efficient media liaison and communication support;
 - 4.1.2 Effective and efficient brand management and change management;
 - 4.1.3 Effective and efficient customer care call centre and information centres;
 - 4.1.4 Effective and efficient social media interaction;
 - 4.1.5 Effective and efficient provision of publicity material and operational system information;
 - 4.1.6 Effective and efficient hosting of community engagements and events management; and
 - 4.1.7 Effective and efficient advertising revenue generation.

5. OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1 The Service provider agrees, subject to the terms and conditions contained herein, to:
- 5.1.1 Source additional expertise, materials and services from outside the George area only where such items are not available in the local George area, and to obtain prior written approval from the Customer to source externally to the municipal area.
 - 5.1.2 Assist with the performance of all Services, which may be varied, modified or extended from time to time by written agreement between the Parties;
 - 5.1.3 Co-ordinate with other internal and external providers of assurance to achieve adequate coverage and to minimise duplication of effort;
 - 5.1.4 Assist with ad hoc requests for Services;
 - 5.1.5 Provide monthly progress reports on contractual compliance to the Customer;
 - 5.1.6 Be responsible for all minute-taking and agenda preparation activities related to regular project status meetings with the Customer;
 - 5.1.7 Provide project management and supervision services in relation to the delivery of the Services to be delivered;

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- 5.1.8 Assist with change management in respect of the GIPTN services;
- 5.1.9 Provide and perform the Services in accordance with this Agreement and the Tender Documents;
- 5.1.10 Confirm that the Services shall be carried out with reasonable care and skill and performed in a timely, workmanlike and cost-effective manner using only qualified staff sufficiently familiar with the functions and operations of the Services;
- 5.1.11 consult with the Customer regarding the allocation of personnel, provided that the Service Provider reserves the right to determine the allocation of its personnel in rendering the said Services after such consultation;
- 5.1.12 Undertake that its personnel who shall be engaged in connection with the provision of the Services shall have the requisite skill and experience for the task allocated to such personnel. If, after consultation with the Customer, it is determined that the Service Provider's existing personnel does not have the requisite skill and experience required for the effective implementation of one or more projects, or should the Customer request additional personnel, the Service Provider shall employ suitable candidates and the allocation of the costs associated with the employment of such candidates shall be agreed in writing between the Parties from time to time;
- 5.1.13 The Customer, following consultation with the Service provider, shall be entitled to request the Service provider to remove any personnel not having the requisite skill or experience or who fail to perform their tasks and responsibilities in accordance with this Agreement. The Service provider will not unreasonably deny this request; and
- 5.1.14 Ensure that the Customer will retain ownership and custody of all electronic and hard copy designs, materials, publications, and documentation prepared for the Customer by the Service provider after engagements are finalised and to retain a copy of the engagement working papers for statutory and internal quality assurance purposes.

6. OBLIGATIONS OF CUSTOMER

- 6.1 The Customer shall be responsible for all its activities referred to in this Agreement and the Tender Documents.
- 6.2 The Customer hereby undertakes to provide such information as the Service provider may reasonably require to comply with its obligations in terms of this Agreement.
- 6.3 As specified in the Tender Documents, the Customer agrees to provide the Service provider call center receptionist and call center supervisor with a workstation within the GIPTN office (consisting of furniture and a computer with access to a printer) that the Service provider may reasonably require to perform the



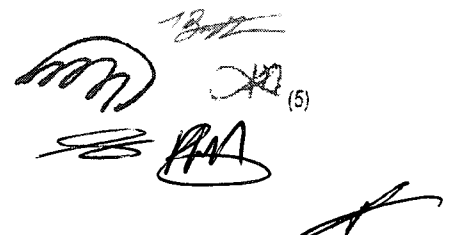
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Services. The Customer will be responsible for ensuring that it has appropriate back up, security and virus-checking procedures in place for any computer facilities provided by the Customer.

- 6.4 The Customer will ensure that their staff are available to provide such assistance as the Service provider may reasonably require and that the Service provider is given reasonable access to senior management, as well as any members of the Customer's staff to enable the Service provider to provide the Services.
- 6.5 Where the Customer is using third parties to provide materials, information or support to a project, including but not limited to where the Customer is employing other suppliers whose work may affect the ability of the Service Provider to provide the Services, the Customer will ensure that it has appropriate agreements in place with those third parties to enable the Service provider to perform the Services under the terms of this Agreement. Unless otherwise agreed in writing, the Customer will be responsible for the management and payment of the third parties and the quality of their input and work.
- 6.6 The implementation of any recommendations made by the Service provider is the responsibility of the Customer.
- 6.7 The Service provider will provide training or arrange for training to be provided to the Customer on any computer software provided to the Customer.

7. PATENTS, TRADEMARKS AND COPYRIGHTS

- 7.1 The Service provider acknowledges that any and all of the trademarks, trade names, copyrights, patents, branding, designs and other intellectual property rights used or embodied in or in connection with the Services including the Customer's software, all equipment and any parts thereof is and shall remain the sole property of the Customer and the Service provider shall not during or at any time after completion, expiry or termination of this Agreement in any way question or dispute the ownership by the Customer of any such rights.
- 7.2 The Service provider agrees to protect, to hold harmless and defend the Customer at its own expense from and against any and all claims of infringements of patents, trademarks, industrial designs, copyrights or other property rights affecting the Services at its own expense, provided that the Customer shall have exercised a reasonable standard of care in protecting the same, failing which, the Customer shall indemnify the Service provider against all actions, proceedings, costs, claims and expenses incurred in respect thereof.
- 7.3 The Customer undertakes to give the Service provider prompt notice of any claim that is made and the Service provider shall have the right to defend any such claims made in respect of this clause seven (7) and make settlements in terms thereof at its own discretion and the Customer shall give such assistance as the Service provider may reasonably require to settle or oppose any such claims.

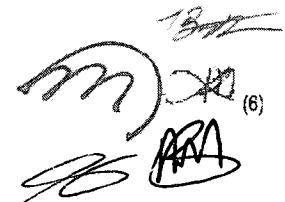
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8. SKILLS TRANSFER, CAPACITY BUILDING AND TRAINING

- 8.1 The Service provider acknowledges that temporary staff have been employed by the Customer within the GIPTN Information Office and GIPTN Call Centre.
- 8.2 Accordingly, the Service provider shall retain and manage the staff contemplated in clause 8.1 above for the duration of this Agreement.
- 8.3 The Customer acknowledges that the staff contemplated in clause 8.1 above will only be retained where the appropriate customer service and communication standards and skill requirements, as set by the Service provider, are met. The aforementioned standards and skill requirements shall be determined by the Service provider in consultation with the Customer, provided that the Service provider shall make the final decision.
- 8.4 If the Service Provider determines that a member of staff contemplated in clause 8.1 above needs to be replaced, the Service provider shall consider individuals from the GIPTN Affected Persons Register wherever possible to fill the vacancy.
- 8.5 The Service provider shall train such number of the Customer's personnel as may be agreed from time to time between the Parties.
- 8.6 The training shall include, but shall not be limited to, the Services as well as any upgrading, customisation or changes to such Services.
- 8.7 The training shall be carried out by experienced personnel of the Service provider who have been directly involved or instrumental in the operations of the Services and who have the requisite experience and expertise to provide training in all aspects and areas of the Services.
- 8.8 If the Customer requires additional training for its staff and/or staff of other organisation within the ambit of the Customer's responsibilities, such training shall be provided by the Service provider upon receiving reasonable notice in writing from the Customer and the Customer shall pay for such additional training subject to budget availability and with the written approval of the Customer prior to the commencement of the training.

9. SUB-CONTRACTORS

- 9.1 It is recorded that the primary responsibility for the rendering of the Services in terms of this Agreement vests with the Service provider and no sub-contractors shall be deemed to have given any warranties or made any representations in relation thereto nor shall they be liable for the obligations of the Service provider, save as expressly set out herein.

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- 9.2 The Service provider shall not subcontract any part of this Agreement to any other party other than those specifically identified in the Tender Response, unless the prior written approval of the Customer has been obtained.
- 9.3 The Service provider accepts no responsibility for any work performed by any subservice providers nominated by the Customer, unless agreed to in writing by the Service provider and the Customer.
- 9.4 It is hereby recorded that the Service provider remains entirely responsible and accountable to the Customer for compliance with the obligations of the Service provider in terms of this Agreement and for the quality of the Services rendered to the Customer by the Service provider, in terms of this Agreement, by means of such subservice providers.

10. GOVERNANCE AND REPORTING ARRANGEMENTS

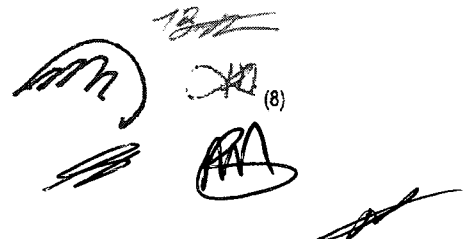
- 10.1 A team will be established ("Project Team") within thirty (30) days after the Signature Date of this SLA for the purposes of controlling, monitoring and evaluation of the Services.
- 10.2 Each Party shall appoint at least two (2) representatives as members of the Project Team, which representatives shall hold management roles within the Service provider and the Customer, respectively, and shall have the required authority to act on behalf of the Parties in consultation with the Customer.
- 10.3 All reports and minutes of all meetings of the Project Team will be in writing and copies will be submitted to the Customer, within seven (7) days after the relevant meeting.
- 10.4 The Project Team will meet weekly in the form of a project status meeting to discuss and approve the weekly project status progress reports, as well as any other items that may need to be addressed.
- 10.5 The Service provider will prepare and submit weekly project status progress reports to the Customer and such reports will be reviewed by the Project Team and approved by the Project Team member appointed by the Customer, in their sole discretion, after the Project member appointed has consulted with the members, at the weekly project status meeting.
- 10.6 The Service provider will prepare a monthly project status progress report to be submitted together with the monthly invoice on the last Business Day of every month but not later than the 3rd Business Day of each month.

11. FINANCIAL ARRANGEMENTS

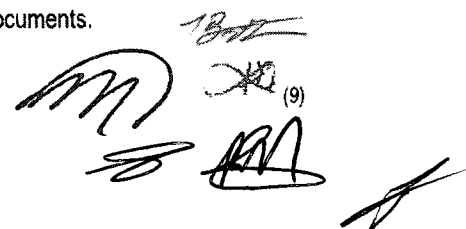
- 11.1 Notwithstanding any specific financial commitments agreed to herein, the financial commitments set out in the pricing schedules of the Tender Specifications and the Tender Response shall apply as if incorporated into this Agreement.

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- 11.2 The Service provider will agree on the contents and format of assignments and budgets with the Customer prior to the commencement of any work activities.
- 11.3 Budgets for all ad-hoc assignments will be agreed in writing between the Customer and the Service provider prior to commencing with any work activities.
- 11.4 The Service provider agrees to issue a single monthly tax invoice to the Customer at the latest by the 3rd Business Day after the last Business Day of every month. This tax invoice will be based on actual time and expenses incurred during the billing period and will be supported by detailed signed timesheets and proof of disbursements. This shall also include progress against an approved workplan.
- 11.5 The invoice must be supported by a signed off version of the monthly project status report as well as minutes of the weekly meetings referred to in clause 10 above.
- 11.6 Fee charges will be calculated by applying the fee rate as detailed in the Tender Documents and will be applicable for activities performed on weekdays, weekends and public holidays.
- 11.7 Disbursements will be recovered at cost and will include, but not limited to, the following:
- 11.7.1 Accommodation in three star rated accommodations on a bed and breakfast basis when required by the Customer.
 - 11.7.2 Air travel in economy class when required by the customer.
 - 11.7.3 Road travel at tendered rates for meetings outside of George.
 - 11.7.4 Admin costs will cover all required administration costs and will amount to 5% of the total payroll which will be stated in the disbursements section of the monthly invoice. No further handling fees will be included.
 - 11.7.5 Telephone costs will be claimed as part of disbursement and will be R500 per consultant working more than 60% of their time on the project. R100 will be allocated per champion and permanent employee and staff who are working in the field. Any further telephone costs will be by mutual written agreement between the Parties. Any yearly increase will be agreed in writing between the Parties, taking cost containment measures into account.
 - 11.7.6 Transport costs for staff working shifts will be for the account of the Service provider and will be claimed as part of disbursements if needed. Costs for other employees for transport to meetings outside of George will be agreed in writing between the Parties.

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- 11.7.7 Website hosting and domain hosting will be claimed as a disbursement and will be with the written pre-approval of the Customer and in terms of the applicable Customer policy and on a three (3) quote basis if required.
- 11.7.8 Payroll administration and accounting costs will be claimed as a disbursement and will be with written pre-approval of the Customer.
- 11.7.9 Stationery required for the call centre will be claimed as a disbursement and will be with the written pre-approval of the customer and in terms of the applicable Customer policy and on a three-quote basis if required.
- 11.7.10 Ad hoc costs including the printing of flyers will be claimed as a disbursement and will be with the written pre-approval of the Customer and in terms of the applicable Customer policy and on a three (3) quote basis if required.
- 11.7.11 Overtime costs for call centre and champion staff will be claimed from disbursements and will be with the written pre-approval of the Customer.
- 11.7.12 Storeroom rental, if required, will be claimed from disbursements and will be with the written pre-approval of the Customer and in terms of the applicable Customer policy and on a three (3) quote basis if required.
- 11.7.13 Any other disbursement or ad-hoc expenses must be related to the scope of the project and must be pre-approved in writing by the contract manager appointed by the Customer from time to time to manage this Agreement. Any specialised skills required to be sourced, will be against the tendered rates and must first be pre-approved in writing by the Customer. Any training required for new staff regarding the project will need written pre-approval and quotations if required.
- 11.7.14 The amount of staff employed will be by written agreement with the Customer and in terms of an approved project plan.
- 11.7.15 Any overtime due to staff, as a result of the operational requirements of the contract, will be paid in terms of all prevailing legislation and will be with the written pre-approval of the customer.
- 11.8 Invoices are due for payment within thirty (30) days of date of issue. Where the payment of the invoice is not made within this period, the Service provider shall, without prejudice to its other rights hereunder or in law, be entitled to charge interest on the outstanding amount at a rate equal to the Prime Rate plus 2%.
- 11.9 Payments will be transferred by the Customer to the Service provider through an Electronic Funds Transfer (EFT).
- 11.10 The Service providers banking details have been provided in the Tender Documents.

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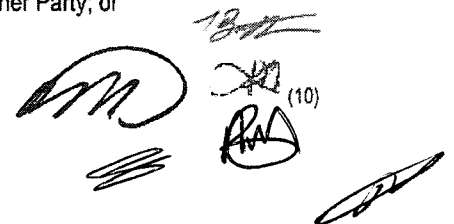
- 11.11 Any further amounts to be transferred other than the above, will be negotiated and mutually agreed to in writing between the Customer and the Service provider.
- 11.12 Furthermore, the Service provider will supply the Customer with a monthly statement detailing:
- 11.12.1 Funds received by the Service provider; and
- 11.12.2 Funds regarded as being outstanding by the Customer.
- 11.13 The above statement must be submitted to the Customer within two (2) Business Days after month end.
- 11.14 In the event of partial rendering of the Services or dispute about certain aspects of Services being rendered, the Service provider will be entitled to the fees for Services rendered and which are not in dispute.
- 11.15 Price increases shall be implemented on an annual basis commencing on 1 October 2021. During the Contract period of three years there can be annual increases as per the Tender Documents.

12. WARRANTY

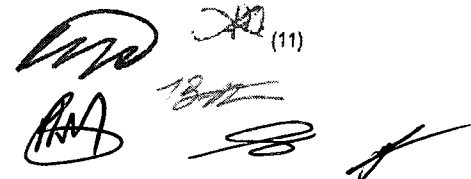
- 12.1 The Service provider warrants to the Customer that the Services will be rendered and conform in all material respects in accordance with the standards as agreed to by both parties from time to time, this Agreement and the Tender Documents. In respect of any unsatisfactory performance by the Service provider, the same shall be remedied by the Service provider at its own cost.
- 12.2 The Service provider warrants that it is duly authorised to enter into this Agreement.
- 12.3 The Service provider warrants that the Services will be executed in such a way as to provide efficient and effective communications and marketing activities as far as is reasonably possible and to report any detected irregularities as soon as possible to the relevant Steering Committee.
- 12.4 This warranty may not be delegated or transferred without the prior written consent of the Customer.

13. BREACH

- 13.1 An event of breach shall be deemed to have occurred if-
- 13.1.1 Any Party breaches any of its obligations in terms of this Agreement and fails to remedy such breach within seven (7) days after receipt of written notice from the other party requiring the remedying thereof if such breach is capable of being remedied; or
- 13.1.2 Any Party ceases or is unable for any reason whatsoever to conduct its business in an ordinary or regular manner, and fails to take reasonable steps to remedy such situation within seven (7) days after having been called upon in writing to do so by the other Party; or

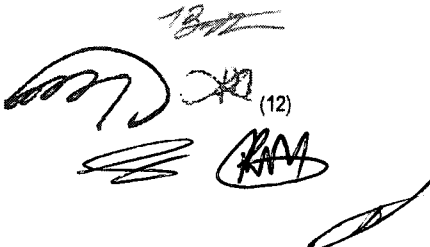
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- 13.1.3 Any covenant or warranty or representation made by any Party in terms of this Agreement is found to be untrue or incorrect in any material respect.
- 13.2 Upon the occurrence of any event of default then, without prejudice to such other rights and remedies which either of the Parties may have at law, if either the Service provider or the Customer is in breach ("the defaulting"), then the Party who is not in breach ("the aggrieved") shall be entitled-
- 13.2.1 To call on the defaulting party to perform its obligations in terms of this Agreement; or
- 13.2.2 To cancel this Agreement, which termination will become effective after notice has been given in writing to the defaulting party and a fourteen (14) day response time has been allowed for rectification.
- 13.3 In the event of cancellation of this Agreement in terms of this clause 13, both parties agree thereto, without prejudice to any of their rights that the rendering of the Services will continue for a period of six (6) months after the date of cancellation or termination of this Agreement on the same terms and conditions set out in this Agreement.
- 14. LIABILITY**
- 14.1 It is recorded and agreed that in the event of any breach by the Service provider of any material term of this Agreement the Customer shall be entitled to recover from the Service provider any damage the Customer may directly suffer or any liabilities which the Customer may directly incur as a result of such breach. For purposes of this clause damage and/or liabilities shall include any additional costs to the Customer in obtaining the Services from a third party to remedy defects, which the Service provider fails to remedy within a reasonable time, having been given notice in writing by the Customer of such default.
- 14.2 In the event that either the Service provider or the Customer fails to comply with any of its obligations in terms of this Agreement the provisions of Clause 13 above will be applicable.
- 14.3 The Parties will use reasonable skill and care in the provision and delivery of the Services.
- 14.4 All findings and recommendations will be made by the Parties in good faith and based on information available at the time. No claim whatsoever will lie against the Service provider if such findings and recommendations prove inaccurate based on inaccurate information provided by the Customer.
- 14.5 The Service provider shall accept liability to pay compensation for damages and losses arising as a direct result of breach of contract or negligence on its part in respect of Services provided in connection with or arising out of this Contract (or any variation or addition thereto). The maximum liability of the Service provider and its related or associated entities, and their respective directors, partners, employees and agents and sub-service providers (hereinafter referred to as the Service provider in this Clause 20) for all claims arising out of the Services provided in connection with this Contract shall be limited to an amount equal to twice the

 (11)

fee received applicable to the departmental auditable component, as detailed in the relevant annual operational internal audit plan.

- 14.6 The Service provider will not be liable to the Customer or any cessionary, assignee, successor or third party claiming through or on behalf of the Customer for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified.
- 14.7 The Services and the project deliverables ("Deliverables") are provided solely for the benefit and use of the Customer unless provided otherwise in this Agreement and relevant assignments. Accordingly, the Customer may not provide copies of the Deliverables or make the benefit of the Services available to any third party, except for the office of the Auditor-General. The Service provider accepts no liability or responsibility to any third party that benefits from, relies upon, or uses the Services or gains access to the Deliverables. The Customer agrees to indemnify the Service provider against any liabilities, losses, expenses or other costs the Service provider reasonably incur in connection with any claims against the Service provider by such third parties.
- 14.8 The Service provider's oral reports and any draft reports that may be submitted will not constitute the Service provider's definite findings and conclusions. These will be contained solely in the Service provider's final signed report.
- 14.9 During the provision of the Services, both Parties may from time to time communicate electronically. The electronic transmission of information cannot be guaranteed to be secure or error-free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each Party (as the "Indemnifying Party") agrees in favour of the other Party (as the "Indemnified Party") that the Indemnifying Party shall defend, indemnify and hold harmless the Indemnified Party and its subsidiaries, affiliates, respective officers, directors, employees, agents, successors and permitted assigns, from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or resulting from a failure by the Indemnifying Party to have in place the appropriate and necessary information technology protection devices and software and/or to carry out commercially reasonable procedures to check for the then most commonly known data safety and integrity risks. Such exclusion of liability will not apply in the event such acts, omissions or misrepresentations are in any case criminal, dishonest or fraudulent on the part of the Indemnifying Party.
- 14.10 The Service provider shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by, or misrepresentations, negligence, fraudulent acts or default on the part of the Customer, its directors, employees, service providers or agents. The Customer indemnifies the Service provider and holds it harmless against all and any claims made against it by any

 (12)

party whatsoever in respect of any such loss, damages, costs or expenses and against the actual costs incurred by the Service provider in defending such claims.

- 14.11 The Customer shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by, or misrepresentations, negligence, fraudulent acts or default on the part of the Service provider, its directors, employees, service providers or agents. The Service provider indemnifies the Customer and holds it harmless against all and any claims made against it by any party whatsoever in respect of any such loss, damages, costs or expenses and against the actual costs incurred by the Customer in defending such claims.

15. CONFIDENTIALITY

- 15.1 For the purposes of this clause "Confidential Information" means all information, drawings, specifications, documentation and data which either party may have imparted in any format whatsoever and may from time to time impart to the other or its employees, agents or representatives relating to the Services, parts or sub-assemblies (including hardware and software or maintenance thereof) and including technical specifications therefore and including all data and information pertaining to the Customer.

- 15.2 Each Party undertakes in favour of the other, in respect of the Confidential Information -

15.2.1 to treat such information as confidential during the currency of this Agreement and at any time thereafter;

15.2.2 not without the prior written consent of the other Party to communicate or disclose any part of such information to any person except -

15.2.2.1 to those employees, consultants and agents on a need to know basis and who are directly involved in connection with the provision of the Services;

15.2.2.2 their auditors, professional advisors and any persons or bodies having the legal right or duty to or knowledge of the Confidential Information;

15.2.3 to ensure that all persons are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Service provider and the Customer.

- 15.3 This clause shall continue in force notwithstanding the termination of this Agreement howsoever caused.

16. CO-OPERATION

- 16.1 The parties undertake to co-operate with each other in all respects in order to give effect to the intent and import of this Agreement.

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17. GOOD FAITH

- 17.1 In the implementation of this Agreement, the parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of any other(s) of them.

18. ARBITRATION

- 18.1 In the management of potential disputes arising after the signing of this Agreement both Parties will endeavour to solve such potential disputes at the level of the Directors within five (5) Business Days, failing which, such potential disputes will escalate to the higher level being the Management level (GIPTN Management Committee) of both parties which must resolve such potential disputes within ten (10) Business Days.
- 18.2 Should the parties fail to resolve the dispute in accordance with the mechanism set out in clause 18.1, the remedies as provided for in this Clause 18.2 may be utilised. The Management Committee will provide recommendations to the Accounting Officers for the final direction, which direction must be given within five (5) business days of the receipt of the recommendations from the Management Committee.
- 18.3 The parties agree that, in the event that they have not been able to resolve a dispute, the following Resolution Procedure set out below shall apply-
- 18.3.1 Disputes will be referred to Senior Counsel or, if agreed to by both parties, to any other advocate or attorney acceptable to both parties ("Counsel"), who will be briefed by the Parties to resolve any such dispute. If an agreement cannot be reached upon a particular Counsel within 3 (three) business days after the parties have agreed to refer the matter to Counsel, then the President for the time being of the Cape Bar Council shall be requested to nominate Counsel within 7 (seven) business days after the parties have failed to agree.
- 18.3.2 Such Counsel shall evaluate the dispute, make a finding relative to the interpretation of such Agreement and/or the tender and his finding shall be final and binding on the Parties.
- 18.3.3 The Counsel or Expert shall be vested with entire discretion as to the procedure to be followed in arriving at his or her decision. It shall not be necessary for the Counsel or Expert to observe or carry out either the strict rules of evidence or any other legal formalities or procedures, but the Counsel or Expert shall be bound to follow principles of law in deciding matters submitted to him.
- 18.3.4 The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, No. 42 of 1965.






Handwritten signatures and initials at the bottom right of the page, including a large signature, a smaller signature, and initials, with the number (14) written next to one of the signatures.

- 18.3.5 The Parties acknowledge and agree that the decision of the Counsel or Expert shall, save in the case of manifest error, be final and binding on the Parties and may at the election of either Party be made an order of court.
- 18.3.6 Such Counsel or Expert will determine liability for payment of the costs incurred as a result of the referral of such disputes to either the Expert or the Counsel, as the case may be.
- 18.3.7 Any resolution made and agreed to by both Parties or as determined by the Expert or the Counsel, as the case may be, on any issue contemplated above must be recorded in writing and shall be binding, whether or not such resolution or determination constitutes a deviation from the Tender Specifications.
- 18.3.8 The Dispute Resolution provided for in this Clause 18 does not prevent any Party from exercising any other right or following any other remedy available to it in terms of this Agreement nor from approaching a court of law, vested with the necessary jurisdiction, for urgent relief.

19. NOTICES AND DOMICILIA

- 19.1 Each of the Parties chooses domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth below:
- 19.1.1 Service provider: 71 Hibernia Street, George, 6530; and
- 19.1.2 Customer: 71 York Street, George, 6530.
- 19.2 Each Party shall be entitled from time to time, by written notice to the others to vary its domicilium to any other address which is not a post office box or poste restante.
- 19.3 Any notice given and any payment made by one Party to the other ("the addressee") which: -
- 19.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 19.3.2 is posted by prepaid registered post to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth Business Day after the date of posting.
- 19.4 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall also include communications by telex or facsimile. Communications by telex or facsimile shall, unless the

 ^{13/11/15}
(15)



contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

20. GENERAL

20.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this Agreement or their duly authorised representatives.

20.2 This Agreement contains the entire agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

20.3 No indulgence, leniency or extension of time which any party ("the Grantor") may grant or show to any other party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.

21. COSTS

21.1 Each party shall bear its own costs of and incidental to the preparation of this Agreement, the drawing and redrafting thereof and sundry attendances incidental hereto, together with all stamp duties payable thereon.

Dated at Grasse on this the 5th Day October 2020.

for: CUSTOMER

As witnesses:

1. Manning
2. [Signature]

Who warrants that he is duly authorised thereto

CAPACITY: MUNICIPAL MANAGER

NAME:

TREVOR JOTHE
13/11

[Signature] (16)
[Signature]

Dated at GEORGE on this the 9 Day OCTOBER 2020.

As witnesses:

1. 

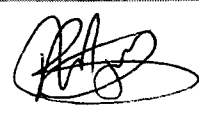
2. 

for: **BM SKILLS DEVELOPMENT & ZHUZH ADVERTISING
AND PUBLISHING CC T/A ROCK SOLID JV**

Who warrants that he is duly authorised thereto

CAPACITY: LEADING PARTNER

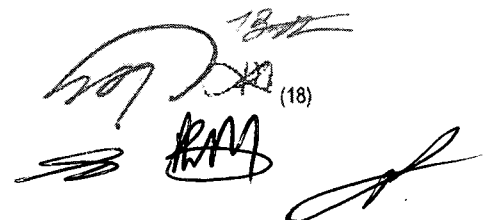
NAME:

BASIL MYNERS







ANNEXURE A: TENDER DOCUMENTATION

Handwritten signatures and initials. The initials 'BM' are at the top. Below them are several signatures, including one that appears to be 'S' and another that is a stylized 'R' or 'M'. A circled signature is also present. To the right of the circled signature is the number '(18)'. A long, horizontal signature is at the bottom right.