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### **17.1 Communications**

All notices, demands and other written communications under this Agreement shall be in English and shall be delivered to the address in Clause 18 of the contract.

### **17.2 Remedies**

No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any 1 (one) or more remedy by either of the parties shall not constitute a waiver by such party of the right to pursue any other remedy.

### **17.3 Severance**

If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties shall endeavor in good faith to agree to an alternative provision to the void, illegal or unenforceable provision.

### **17.4 Survival of rights, duties and obligations**

Termination of this Agreement for any cause shall not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination.

### **17.5 Entire Agreement**

This Agreement constitute the entire agreement between the parties and, save as otherwise expressly provided, no modification, amendment or waiver

of any of the provisions of this Agreement shall be effective, unless made in writing specifically referring to this Agreement and duly signed by or on behalf of the parties.

## **17.6 Assignment**

This Agreement shall be binding to the parties and to their respective successors and assigns; provided that neither party shall be entitled to cede its rights and delegate its obligations under this Agreement without the prior written consent of the other party.

## **17.7 Further Assurance**

Each party shall co-operate with the other party and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

## **17.8 Good Faith**

Each of the parties undertakes with the other to do all things reasonably within its power, which are necessary or desirable to give effect to the spirit and intent of this Agreement.

## **17.9 Jurisdiction**

17.9.1 This Agreement shall be governed by and construed in accordance with the laws of the Kingdom of Swaziland.

17.9.2 In the event of proceedings arising out of or in connection with this Agreement being instituted in the ordinary courts of law, such proceedings shall be instituted in the High Court and the parties consent to the jurisdiction of the High Court of Swaziland.

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## 17.10 Council Workshop/Office Space Rental

The Service provider shall enter into a Lease agreement with Council to utilize Council Workshops.

## 18. ADDRESSES

18.1 The parties choose for the purposes of this Agreement the following postal and email addresses:

### MUNICIPAL COUNCIL OF MBABANE:

**Physical address** : Civic Offices, 1 Mahlokohla Street

**Postal Address** : P.O. Box 1, Mbabane H100

**Email Address** : [mncedisim@mbacity.org.sz](mailto:mncedisim@mbacity.org.sz)

Name of Service Provider.....:

**Physical Address** : .....

**Postal Address** : .....

**Email Address** : .....

18.2 Any legal process to be served on either of the parties may be served on it at the address specified for it in Clause 18.1 and it chooses that address as its domicile citadi et executadi for all purposes under this Agreement.

18.3 Any notice or other communication to be given to either of the parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.

18.4 A notice to either party which is sent by registered post in a correctly addressed envelope to the address specified for it in Clause 18.1 shall be deemed to have been received (unless the contrary is proved) within 5 (five) business days from the date it was posted, or which it is delivered to the party

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by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

18.5 Notwithstanding anything to the contrary in this Clause 18, a written notice or other communication actually received by either the Council's designated Representative or the Service Provider's Representative, as the case may be, (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

18.6 Either party may by written notice to the other party change its address for the purposes of Clause 18.1 to any other address (other than a post office box number) provided that the change shall become effective on the 5<sup>th</sup> (fifth) business day after the receipt of the notice.

## 19. COSTS

19.1 Any costs, including attorney and own clients costs, incurred by either party arising out of the other party breaching any of the provisions of this Agreement, shall be borne by the party in breach.

**THUS DONE AND SIGNED BY THE COUNCIL AT ..... ON THIS..... DAY OF  
..... 2016**

**AS WITNESSES:**

1 .....

.....  
**FOR AND ON BEHALF OF COUNCIL**

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2 .....

**THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT.....ON THIS ... DAY  
OF..... 2016**

**AS WITNESSES:**

1 .....

.....

**FOR AND ON BEHALF OF SERVICE PROVIDER**

2 .....

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## APPENDIX A

### PERFORMANCE AND STANDARD OUTPUT

DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
1. Meet the Council service level standards (SLS)	<ul style="list-style-type: none"> <li>Complete Posted Signs installations and rehabilitation accordance to the set-out obligations in section 5 of this agreement.</li> <li>Damaged signage repaired within 7days</li> <li>No NCRs issued for delayed services</li> <li>No visible sign which is damaged or worn out around the city</li> </ul>	<ul style="list-style-type: none"> <li>Completed work as per instruction forms</li> <li>NCR register</li> </ul>	25
2. All posted signs and street names are kept in a structurally sound and clearly visible state	<ul style="list-style-type: none"> <li>Carry out maintenance and installation of all posted signs and street names identified in the inventory in accordance to the set-out SADC standard and within the time frames specified in this agreement</li> <li>Use material approved by Maintenance Engineer or his/her representative.</li> </ul>	<ul style="list-style-type: none"> <li>Weekly/monthly maintenance reports</li> <li>Condition survey report by 30<sup>th</sup> June, September, December and March of each financial year.</li> </ul>	25

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DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
	<ul style="list-style-type: none"> <li>Carry out quarterly condition survey of all Council Posted Signs and Guardrails as per Council Profoma.</li> </ul>		
3. Ensure adherence to quality standards specified by Maintenance Engineer or his/her representative	<ul style="list-style-type: none"> <li>Provide material stated in section 5 of this agreement or approved by Maintenance Engineer or his/her representative</li> <li>Provide information of new equivalent to specified products for approval.</li> <li>All signage installed conform to SADC standard</li> </ul>	<ul style="list-style-type: none"> <li>Completed material inspection checklist</li> <li>Completed signage inspection checklist</li> </ul>	15
4. Reporting and progress meetings	<ul style="list-style-type: none"> <li>Complete the job card in full</li> <li>Weekly meetings, and/or monthly meetings are held with the client</li> <li>Keep records of all carpentry repairs</li> <li>Monthly reports submitted to ME by the 1st of each Month</li> </ul>	<ul style="list-style-type: none"> <li>Job cards completed in full.</li> <li>12 Monthly reports</li> <li>Proof of Monthly reports submitted to ME by the 1st of each Month</li> <li>Minutes of weekly meeting and monthly meetings with client are up to date</li> </ul>	10
5. Comply with Council's supply chain	<ul style="list-style-type: none"> <li>Ensure that purchase orders are received for</li> </ul>	<ul style="list-style-type: none"> <li>Job cards with corresponding purchase order</li> </ul>	10

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DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	PERFORMANCE RATING
management system	works to be carried out. <ul style="list-style-type: none"> <li>Issue Invoice of work completed within 7 days</li> </ul>	numbers <ul style="list-style-type: none"> <li>Invoices with corresponding purchase order numbers</li> </ul>	
6. Adherence to the Labour Law and Occupational Health Laws.	<ul style="list-style-type: none"> <li>Compliance with the Occupational Health and Safety Act</li> <li>Comply with Council's Safety and Health Standards</li> <li>Compliance with the Industrial Relations Act and Labour Laws</li> </ul>	<ul style="list-style-type: none"> <li>Refer to appendix B</li> </ul>	15
Total			100

\* *The minimum performance to qualify for renewal is an average 85% after the third year.*

\*\* *Performances below 70% on your annual appraisal may lead to Council terminating the Contract with immediate effect.*

\*\*\* *Performance appraisals will be done in January of each year.*

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Appendix B

Ref. No. SLA	Document Description	Year			Comments
		1	2	3	
1.	<b>Signed Employment Contracts/Agreements</b> with employees				
2.	<b>Health and Safety Representatives and Committee</b>				
3.	<b>Certificate of Incorporation</b>				
4.	<b>Valid Company Tax Compliance Certificate</b>				
5.	<b>ERS approved Monthly VAT remittance</b>				
6.	<b>Valid Company Trading License Certificate</b>				
7.	<b>Public Liability Insurance Policy</b>				
8.	<b>Valid Labour Compliance Certificate</b>				
9.	<b>Valid Eswatini National Provident Fund Compliance Certificate</b>				
10.	<b>Personal Protective Equipment (PPE) Policy</b>				
11.	<b>Health and Safety Policy</b>				
12.	<b>Training provided</b> by the Service Provider to its employees (Customer service training				

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