

SERVICE DELIVERY AGREEMENT

between

**O.R. TAMBO DISTRICT MUNICIPALITY
("ORTDM")**

and

**NTINGA O.R. TAMBO DEVELOPMENT AGENCY SOC LTD
("NTINGA")**

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1. INTERPRETATION

In this Agreement:

- 1.1 clause headings shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention:
 - 1.2.1 an expression, which denotes:
 - 1.2.1.1 any gender includes the other genders;
 - 1.2.1.2 a natural person includes an artificial person and vice versa;
 - 1.2.1.3 the singular includes the plural and vice versa;
 - 1.2.2 the following expressions shall bear the following meanings and related expressions bear corresponding meanings:
 - 1.2.2.1 "ORTDM" means the O.R. Tambo District Municipality, a juristic body duly established in terms of the Local Government: Municipal Structures Act, No 117 of 1998, as amended;
 - 1.2.2.2 "Ntinga" means Ntinga O.R. Tambo Development Agency SOC LTD, a municipal entity duly established in terms of section 86C of the Local Government: Municipal Systems Act, No 32 of 2000, as amended;
 - 1.2.2.3 "Agreement" means this agreement;
 - 1.2.2.4 "Auditors" means the Auditor-General;
 - 1.2.2.5 "Companies Act" means Companies Act 71 of 2008 as amended and Regulations;
 - 1.2.2.6 "MFMA" means the Municipal Finance Management Act, No. 56 of 2003 and Regulations;
 - 1.2.2.7 "the Area" means the designated geographical area of the ORTDM;
 - 1.2.2.8 "IDP" means the Integrated Development Plan of the ORTDM.
 - 1.2.2.9 "DDP" means the District Development Plan of the ORTDM.

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- 1.2.2.10 "REDP" means Rural Economic Development Planning Department of the ORTDM.
- 1.2.2.11 "Business Day" means any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.2.2.12 "Parties" means collectively the ORTDM and Ntinga and includes an individual reference to anyone or more of them, as the context may require;
- 1.2.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.2.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.2.5 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.7 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.2.8 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.2.9 the expiration or termination of this Agreement shall not affect the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect

after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. RECORDAL

2.1 The NDP proposes that economic growth and development and the target of creating 11 million jobs by 2030 can be achieved through:

- Increasing exports;
- Investing in infrastructure to facilitate economic activity that is conducive to growth and job creation;
- Lowering the cost of doing business;
- Matching unemployed people to jobs;
- Providing a tax subsidy to businesses to reduce the cost of hiring people;
- Rewarding the setting up of new businesses including partnering with companies;
- Reducing the cost of living for low-income and working class households;
- Reducing the cost of regulatory compliance – especially for small and medium sized firms;
- Supporting small business through better coordination of relevant agencies, development finance institutions, and public and private incubators, and
- Building an expanded skills base through better education and vocational training.

2.2 As far as infrastructure is concerned, DDP set a goal being “A significant improvement in the provision of public infrastructure and public services (and a great increase in supporting livelihoods in doing so)”.

2.3 In accordance with its broader economic strategic approach, the ORTDM through its RURAL ECONOMIC AND DEVELOPMENT PLANNING DEPARTMENT (REDP) acts to facilitate and coordinate economic development in the Area. By virtue of this role, the REDP develops and informs Ntinga’s policies and programmes on economic development.

2.4 This mandate necessitates the implementation of programmes and policies to be carried out through the municipal entity of the ORTDM, Ntinga.

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- 2.5 The ORTDM wishes to enter into an agreement with Ntinga for the latter to be appointed as the implementing agent for the ORTDM for all its strategic projects within the Area in accordance with sections 76 (b)(1) and 80(1)(a) of the Municipal Systems Act 32 of 2000 read with Section 84 of the Municipal Structures Act.

3. APPOINTMENT

The ORTDM hereby contracts with Ntinga as its implementing agent in respect of its existing and potential strategic projects and programmes on the terms and conditions more fully described in this agreement. This is premised on Ntinga's mandate summarised as follows:-

- I. Integrated Development Planning;
- II. Potable Water Supply Systems;
- III. Domestic and Industrial Waste-water and Sewage Disposal Systems;
- IV. Fresh Produce Markets and Abattoirs;
- V. Local Tourism Promotion;
- VI. Municipal Public Works;
- VII. Taxes, Levies and Duties; and
- VIII. Discretionary Initiatives.

4. DURATION

Irrespective of the date of signing hereof, this agreement shall commence on 1st July 2020 and shall be for an initial period of twelve (12) months.

5. GENERAL RIGHTS AND OBLIGATIONS OF THE ORTDM

The ORTDM will:

- 5.1 facilitate, develop and approve policies designed to market and promote the Area.
- 5.2 through the brand marketing framework, set out the parameters for the development and implementation of a tourism development and marketing strategy for the Area.
- 5.3 promote communication and co-operation between local business within the Area and Ntinga in respect of its existing and potential strategic initiatives.
- 5.4 provide a framework through the IDP on the identification of projects and programmes to be implemented by Ntinga.
- 5.5 in conjunction with Ntinga, prepare specific terms of reference for each strategic project or programme.
- 5.6 in all matters not specifically dealt with in terms of this agreement, act in accordance with the provisions of the MFMA and the Municipal Systems Act.
- 5.7 support Ntinga in areas of internal audit, risk management, performance management and legal services.
- 5.8 provide adequate budget for Ntinga as provided for in the MFMA so that it is able to implement its mandate.
- 5.9 provide a budget for both specific projects as well as operational costs of the Entity.
- 5.10 make payments to Ntinga to enable it to commence and/or continue with implementation of assigned projects and/or programmes.
- 5.11 make payments to Ntinga within a shortest possible time and not exceeding 30 days after submission of invoices.

6. GENERAL RIGHTS AND OBLIGATIONS OF NTINGA

Ntinga will:

- 6.1 represent the interest of the ORTDM and its partners and all the key priority sectors as outlined in the IDP to facilitate economic and social development within the Area.

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- 6.2 implement the IDP and other related policies of the ORTDM to promote economic development in the Area.
- 6.3 guided by the ORTDM's economic development strategic framework, implement strategic projects within the Area.
- 6.4 Implement on behalf of the ORTDM specific projects including water services.
- 6.5 in all matters act loyally to the ORTDM and obey their instructions in respect of strategic projects authorised by the ORTDM. In the absence of any such instructions in relation to a particular matter, Ntinga will act in such a manner as Ntinga reasonably considers being most beneficial to the interests of the ORTDM.
- 6.6 in the event of any dispute arising between Ntinga and a third party in respect of the implementation of a strategic project, forthwith inform the ORTDM of the dispute.
- 6.6 be entitled to effect amendments to its project plans upon consultation with the ORTDM.
- 6.7 be entitled to enter into agreements in respect of the implementation of all authorised strategic projects and programmes.
- 6.8 be entitled to consult with international, national and provincial stakeholders in respect of any strategic project or programme.
- 6.9 in all matters not specifically dealt with in terms of this agreement, act in accordance with the provisions of the MFMA, the Municipal Systems Act and Companies Act.
- 6.10 Utilise grant funding received from the ORTDM in terms of the Board approved budget.
- 6.11 Payback to ORTDM any unspent amount allocated to specific projects if such projects are completed or discontinued.

7. BANK ACCOUNT

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- 7.1 Ntinga must open and maintain at least one bank account in the name of Ntinga and all money received by Ntinga must be paid into its bank account.
- 7.2 Ntinga may not open a bank account:
- 7.2.1 abroad;
 - 7.2.2 with an institution not registered as a bank;
 - 7.2.3 otherwise than in the name of Ntinga;
 - 7.2.4 without the approval of its board of directors.

8. FINANCIAL YEAR

The financial year of Ntinga is the same as that of the ORTDM, which is, 1st July to 30th June.

9. BUDGET

- 9.1 The board of directors of Ntinga shall, for each financial year submit a proposed budget for Ntinga to the ORTDM not later than 150 days before the beginning of Ntinga's financial year and/or on an earlier date that has been determined by the ORTDM.
- 9.2 The aforementioned budget must:
- 9.2.1 be balanced;
 - 9.2.2 be consistent with this service delivery agreement and/or any other agreement between Ntinga and the ORTDM;
 - 9.2.3 be within legal limits determined and stipulated by the ORTDM, including any limits on tariffs, revenue, expenditure and borrowing;
 - 9.2.4 include a multi-year business plan for Ntinga that:
 - 9.2.4.1 sets out key financial and non-financial performance objectives and measurement criteria as agreed with the ORTDM;

- 9.2.4.2 is consistent with the budget and IDP of the ORTDM;
- 9.2.4.3 is consistent with this service delivery agreement and/or other agreement between Ntinga and the ORTDM;
- 9.2.4.4 reflect actual and potential liabilities and/or commitments, including particulars of any proposed borrowing of money during the period to which that plan relates.
- 9.2.5 comply with the requirements of section 17(1) and (2) of the MFMA, where applicable.
- 9.3 The ORTDM must consider Ntinga's proposed budget, assess Ntinga's priorities and objectives and may make recommendations on the proposed budget.
- 9.4 Where the ORTDM makes any recommendations, the board of directors of Ntinga shall consider such recommendations and, where necessary, submit a revised budget to the ORTDM not later than 100 days before the start of the financial year.
- 9.5 The Executive Mayor of the ORTDM shall table to council the proposed annual budget of Ntinga where the annual budget of the ORTDM for the relevant year is tabled.
- 9.6 The board of directors of Ntinga shall approve the budget of Ntinga not later than 30 days before the start of the financial year, taking into account any recommendations submitted by the ORTDM Council.
- 9.7 The board of directors of Ntinga may, with the approval of the Executive Mayor, revise the budget, only for the following reasons:
- 9.7.1 To adjust the revenue and expenditure estimates downward where there is material under collection of revenue during the current year;
- 9.7.2 To authorise expenditure of any additional allocations to Ntinga from the ORTDM;
- 9.7.3 To authorise any unforeseeable and unavoidable expenditure approved by the Mayor;
- 9.7.4 To authorise any other expenditure within a prescribed framework.

- 9.8 Any projected allocation of funds to Ntinga from the ORTDM must be provided for in the annual budget of the ORTDM.
- 9.9 Ntinga may only incur expenditure in accordance with its approved budget or an adjusted budget.
- 9.10 The Executive Mayor must table to council the budget or adjusted budget and any amended budget of Ntinga as approved by its board of directors, at the next council meeting of the ORTDM.
- 9.11 Ntinga's approved budget or adjusted budget must be made public in substantially the same way as the budget of the ORTDM.

10. REPORTING AND COMMUNICATION

- 10.1 The accounting officer of Ntinga must submit to the ORTDM in writing:
- 10.1.1 within 90 days after Ntinga has opened a new bank account, the name of the bank where the account has been opened, the type and number of the account; and
- 10.1.2 annually before the start of a financial year, the name of each bank where Ntinga holds a bank account, the type and number of each account.
- 10.2 The accounting officer of Ntinga must by no later than 7 (seven) working days after the end of each month submit to the accounting officer of the ORTDM a statement in the prescribed format on the state of Ntinga's budget reflecting the following particulars for that month and for the financial year up to the end of that month:
- 10.2.1 actual revenue per source;
- 10.2.2 actual borrowings;
- 10.2.3 actual expenditure;
- 10.2.4 actual capital expenditure;
- 10.2.5 amount of allocations received;

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- 10.2.6 actual expenditure on the allocations mentioned above, excluding expenditure exempted by the annual Division of Revenue Act;
- 10.2.7 any material variances from Ntinga's projected revenue by source, and from Ntinga's expenditure projections;
- 10.2.8 any material variances from the service delivery agreement and the business plan;
- 10.2.9 any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within Ntinga's approved budget;
- 10.2.10 projection of revenue and expenditure for the rest of the financial year, and any revision from initial projections;
- 10.2.11 the amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in Ntinga's approved budget.
- 10.3 The accounting officer of Ntinga must by 20 January of each year
- 10.3.1 Assess the performance of Ntinga during the first half of the financial year and submit a report on such assessment to the ORTDM in accordance with the provisions of section 88(a) and (b) of the MFMA.
- 10.4 The accounting officer of Ntinga must within 7 (Seven) days of the end of each quarter, submit to the accounting officer of the ORTDM, a report on the implementation of the SCM policy for submission to council.
- 10.5 The accounting officer of Ntinga must disclose to the ORTDM all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the ORTDM.
- 10.6 Ntinga must report to the ORTDM within 7 (Seven) days after the end of each quarter on all expenditure incurred by Ntinga on directors and staff remuneration matters in a manner that discloses such expenditure per type of expenditure in accordance with the provisions of section 89 of the MFMA.
- 10.7 Communication between the ORTDM and Ntinga shall be as follows:

- 10.7.1 The Executive Mayor of the ORTDM shall communicate with the Chairperson of the Board of Ntinga through the Deputy Executive Mayor and MMC responsible for Rural Economic Development and Planning who sits in the BOD Meetings as a political representative of council on behalf of the Executive Mayor.
- 10.7.2 Following the Entity's annual general meeting the Deputy Executive Mayor shall present to the district municipality a report covering at least the following areas:-
- a) Board of Directors report;
 - b) Adoption of Annual Financial Statements;
 - c) Adoption of the Audit Report;
 - d) Confirmation of Audit Committee Members and Chairperson;
 - e) Adoption of the Audit Committee Report;
 - f) Adoption of the Annual Report; and
 - g) Confirmation of External Auditors.
- 10.7.3 As stipulated in clause 93D (1) of the Municipal Systems Act 32 of 2000, the Council of a parent municipality must designate a Councillor or an official of the parent municipality to represent ORTDM as a non-participating observer in all meetings of the Board of Directors.
- 10.7.4 The Director REDP, at an administrative level, shall represent ORTDM in all meetings of the Board of Directors and shall report to the Municipal Manager and Senior Management of ORTDM on all administrative issues relating to Ntinga operations.
- 10.7.5 The Chief Executive Officer of Ntinga at an administrative level must submit all reports at management level to the Municipal Manager of the ORTDM.
- 10.7.6 Municipal Manager shall ensure that Ntinga reports are consolidated into those of ORTDM.

11. ACCOUNTING AND AUDITS

11.1 Ntinga must:

- 11.1.1 keep full and proper books of account and records showing clearly all enquiries, transactions and proceedings relating to Ntinga and, in particular, all transactions undertaken by or through Ntinga in respect of other strategic projects;
- 11.1.2 ensure that the resources of Ntinga are used effectively, efficiently, economically and transparently;
- 11.1.3 implement effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement;
- 11.1.4 ensure that irregular, fruitless and wasteful expenditure and other losses are prevented;
- 11.1.5 allow any person authorised by the ORTDM to have access at all reasonable times to Ntinga's premises for the purpose of inspecting the said books and records;
- 11.1.6 adopt a consistent and as far as possible uniform policy in the preparation of its financial statements based on sound and generally accepted accounting principles and practices in the Republic of South Africa;
- 11.1.7 ensure that disciplinary or, when appropriate, criminal proceedings, are instituted against any official of Ntinga who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA;
- 11.1.8 be subject to an annual audit by the Auditor-General in respect of all accounts, financial statements, financial management and performance information. Ntinga undertakes to provide its full co-operation in respect of such audits.

12. PROCUREMENT

- 12.1 Ntinga shall be obliged to implement the supply chain management policy in terms of section 111 of the MFMA
- 12.2 The supply chain management policy of Ntinga must be consistent to the extent determined by ORTDM supply chain management policy as stipulated in Clause 2(2) of the Supply Chain Management Regulations
- 12.3 If the supply chain management policy of Ntinga is not consistent to that of ORTDM, the ORTDM Council must take appropriate steps to ensure consistency.

13. INDEMNITY

- 13.1 Ntinga hereby indemnifies ORTDM from and against any claims, costs, damages, penalties or expenses, suffered or incurred by ORTDM as a result of the negligence of Ntinga, its agents, contractors, employees or assigns.
- 13.2 In the same token, ORTDM hereby indemnifies Ntinga from and against any claims, costs, damages, penalties or expenses, suffered or incurred by Ntinga as a result of the negligence of ORTDM, its agents, contractors, employees or assigns.

14. ASSIGNABILITY

The Parties' rights or obligations hereunder shall not be transferable or assignable either voluntarily or involuntarily in whole or part whether by operation of law or otherwise without the prior written consent of the other party.

15. NON-DISCLOSURE

The Parties hereby agree and represent that, in the absence of prior written authorisation from the other Party to the contrary, a party will not divulge to third parties any information in respect of any authorised strategic project with the Area and will undertake all necessary measures and precautions to ensure that its management and employees are aware of, and comply with, this non-disclosure provision.

16. **INVALIDITY**

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. The Parties shall nevertheless negotiate in good faith in order to agree the terms of mutually satisfactory provisions, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.

17. **DISPUTES**

17.1 In the event of a dispute arising between the Parties, such dispute will be dealt with through mediation by the Executive Mayor of the ORTDM or any person delegated by the Executive Mayor to ensure an amicable resolution. The authorised representatives of the Parties undertake to meet within 14 days after either party has notified the other party in writing of such dispute.

17.2 Save as otherwise provided in this Agreement and should any dispute not be resolved within 3 (three) days after the Parties have met, then the dispute shall, unless the Parties thereto otherwise agree in writing, be referred to Council or an expert ("Expert") for determination in accordance with the remaining provisions of this clause 17.

17.3 The Expert shall:

17.3.1 if the matter in issue is primarily an accounting matter, be an independent South African practising accountant of not less than 15 (fifteen) years standing;

17.3.2 if the matter in issue is primarily a legal matter, be a South African practising senior counsel of not less than 5 (five) years' standing;

17.3.3 if the matter in issue is any other matter, be an independent South African senior counsel as envisaged in clause 17.3.2 or be any other independent person;

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17.3.4 be agreed upon by the Parties to the dispute or failing agreement be appointed by Council.

17.4 The Expert selected as aforesaid shall in all respects act as an expert and not as an arbitrator.

17.5 The Expert shall be vested with entire discretion as to the procedure to be followed in arriving at his decision. It shall not be necessary for the Expert to observe or carry out either the strict rules of evidence or any other legal formalities or procedures, but the Expert shall be bound to follow principles of law in deciding matters submitted to him or her.

17.6 The Expert shall have the power, inter alia, to:

17.6.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and, for that purpose, shall have the widest powers to investigate all the books, records, documents and other things in the possession of any party to the dispute or under its control, the right to inspect goods and property of the Parties, the right to take copies and/or make extracts therefrom and the right to have them produced and/or delivered to any place reasonably required by him for the aforesaid purposes;

17.6.2 interview and question under oath any of the Parties or other parties to the dispute, including the right to cross examine such Parties;

17.6.3 summon witnesses;

17.6.4 record evidence;

17.6.5 make an interim award;

17.6.6 make an award regarding legal fees/costs and the Expert's remuneration. If he fails or declines to do so, then each of the Parties to the dispute shall bear and pay its own costs. Until such time as the Expert's decision is given, the Parties to the dispute shall bear and pay such costs in equal shares;

17.6.7 call for the assistance of any other person who he may deem necessary to assist him in arriving at his decision; and

17.6.8 exercise any additional powers which may be exercised by an arbitrator in terms of the Arbitration Act 1965 as amended.

- 17.7 Any hearing by the Expert shall be held in Mthatha, South Africa unless the Expert determines that it is more convenient or equitable that the hearing or any part thereof (including, but without limitation, the taking of evidence) be held elsewhere, in which event the hearing (or the relevant part thereof) shall be held in the place so determined by the Expert.
- 17.8 The Parties shall use their best endeavours to procure that the decision of the Expert shall be given within 30 (thirty) days or so soon thereafter as is possible after it has been demanded.
- 17.9 The decision of the Expert shall be final and binding on all Parties affected thereby, shall be carried into effect and may be made an order of any competent court at the instance of any party to the dispute.
- 17.10 This clause shall not preclude any party from obtaining relief by way of motion proceedings on an urgent basis or from instituting any interdict, injunction or any similar proceedings in any court of competent jurisdiction pending the decision of the Expert.

18. **BREACH**

Save as otherwise provided in this Agreement, should either party commit a breach of any provision of this Agreement and fail to remedy such breach within fourteen days after receiving written notice from the party aggrieved thereby requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law, to claim immediate specific performance of all of the defaulting party's obligation. In either event, without prejudice to the aggrieved party's right to claim damages it is agreed that neither party shall be entitled to cancel this Agreement for any reason whatsoever, except in the event of a material breach.

19. **DOMICILIUM AND NOTICES**

19.1 The Parties choose domicilium citandi et executandi for all 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, as follows:

19.1.1 ORTDM: Physical: **Myezo House, Nelson Mandela Drive, Mthatha**

Postal: **Private Bag X6043**

Telefax: **(+27)47 532 3045**

Marked for the attention of the Municipal Manager

19.1.2 Ntinga: Physical: **Old Government Printers, 5 Textile Road, Vulindlela Heights, Mthatha**

Postal: **P.O Box 1134**

Telefax: **(+27)47 531 4121**

Marked for the attention of the CEO.

19.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20. GENERAL

20.1 This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof.

20.2 No party shall be bound by any representation, warranty, promise or the like not recorded herein.

20.3 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by on or behalf of the Parties.

20.4 No indulgence, which any part may grant to any other, shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

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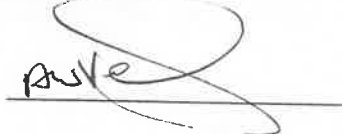
20.5 This Agreement supercedes all prior agreements, understandings and arrangements existing between the Parties relating to the subject matter hereof.

21. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.

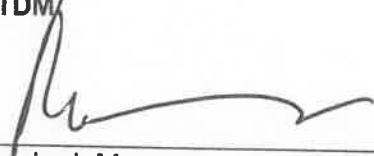
SIGNED at MTATHA on this 23 / day of FEBRUARY , 2021

AS WITNESSES:

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2. _____

For :

ORTDM



Municipal Manager: who warrants that he is duly authorised hereto

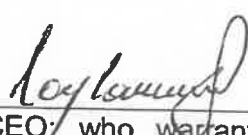
SIGNED at _____ on this _____ / day of _____ / _____

AS WITNESSES:

1. Kholeka Skolo
2. _____

For :

Ntinga



CEO: who warrants that he is duly authorised hereto