



SERVICE LEVEL AGREEMENT:

OFFICE AUTOMATION & PHOTOCOPYING MACHINES

MADE AND ENTERED INTO BY AND BETWEEN

THE VICTOR KHANYE LOCAL MUNICIPALITY

Herein represented by

MJ MAHLANGU

in his capacity as Municipal Manager of the Victor Khanye Local Municipality and duly authorized thereto

(Herein after referred to as the **“Municipality”** on the one part)

And

DIDO DIGITAL DOCUMENTS (PTY) LTD

(REG. NO. 2010/002600/07)

Herein represented by

G MAKHADO

in his/her capacity as Director of Dido Digital Documents (Pty) Ltd

and duly authorized thereto in terms of a resolution dated 02 February 2016

(Hereinafter referred to as the **“Service Provider”** on the other part)

(Hereinafter collectively referred to as the **“Parties”**)

PREAMBLE

WHEREAS Service Provider has presented to the Municipality through the submission of a tender document for the Project MM/ITC01/2015/2016: Operational Leasing and Maintenance of Office Automation and Photocopying Machines for a contract period of 3 years;

AND WHEREAS the Municipality has considered the tenders received for the Project MM/ITC01/2015/2016: Operational Leasing and Maintenance of Office Automation and Photocopying Machines for a contract period of 3 years and has approved the bid submitted by said Service Provider;

AND WHEREAS, this agreement shall be read together and incorporated with the Tender document submitted by the Service Provider for the Project MM/ITC01/2015/2016: Operational Leasing and Maintenance of Office Automation and Photocopying Machines and the appointment letter under this project;

AND WHEREAS, the parties agree to enter into an Service Level Agreement for the Leasing, Maintenance and Servicing of Office Automation and Photocopying Machines;

AND WHEREAS the Parties are desirous of reducing the terms and conditions to writing.

NOW THEREFORE THESE PRESENTS WITNESSETH:

1. PARTIES

The parties to this Agreement are as follows:-

- 1.1 Dido Digital Documents (Pty) Ltd, Reg. No. 2010/002600/07 (hereinafter referred to as "Service Provider", a Company with limited liability registered in the Republic of South Africa, carrying on business at No 3 Kirkby Road Cambridge Place, MCA House, Bedford Gardens.
- 1.2 Victor Khanye Local Municipality (hereinafter referred to as "Municipality ", a municipality established in terms of the Municipal Structures Act 117 of 1998, with its main office situated at Corner Samuel Road and & Van der Walt Street, Delmas.

2. INTERPRETATION AND DEFINITIONS

In this Agreement:-

- 2.1 Clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of this Agreement, nor modify, nor amplify any of its provisions;
- 2.2 A reference to:-
 - 2.2.1 any particular gender shall include the other gender;
 - 2.2.2 the singular shall include the plural and vice versa;
 - 2.2.3 a natural person shall include a juristic person (whether a corporate or an unincorporated entity) and vice versa;
 - 2.2.4 where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;
 - 2.2.5 where an expression has been defined (whether in 2.2 below or elsewhere in this Agreement) and such definition contains a provision conferring a right or imposing an obligation on either party, then notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement;
 - 2.2.6 the *contra proferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the party responsible for the drafting or preparation of such provision;
 - 2.2.7 the *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned;
 - 2.2.8 a reference to any statutory enactment (including statutes, ordinances, regulations and by-laws) shall be construed as a reference to that enactment as at the signature date, and as amended or re-enacted or substituted from time to time thereafter.

2.3 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:-

- 2.3.1 “**Agreement**” shall mean this Service Level Agreement read together with the bid document and any Addendum hereto which may be concluded from time to time;
- 2.3.2 “**Effective Date**” 01 May 2016 or an alternative date agreed to by and between the parties in writing;
- 2.3.3 “**Equipment / Hardware**” shall mean the multifunctional machines listed in the document attached to this agreement as **ANNEXURE A**;
- 2.3.4 “**Lease**” shall mean the leasing of the equipment for by the client as per the costs under Schedule 2 of the tender document;
- 2.3.5 “**MRC**” shall mean Monthly Recurring Charge;
- 2.3.6 “**NRC**” shall mean Non Recurring Charge;
- 2.3.7 “**Republic**” shall mean the Republic of South Africa;
- 2.3.8 “**The Services**” shall mean the supply and delivery of the equipment and the sustaining of the equipment in good working order and condition, by providing full maintenance and repairs;
- 2.3.9 “**the Signature Date**” shall mean the date upon which this Agreement shall have been duly signed by the last party signing same;
- 2.3.10 “**VAT**” shall mean Value-added Tax as defined in the VAT Act.
- 2.3.11 “**Remote Access**” means full Remote Desktop / RDP access to the Print ~Server which will intern give access to the Municipal ICT Network
- 2.3.12 “**Change Management and Patch Management**” means security measure, policy and procedure in place for external connections to the municipal ICT Network

3. NATURE OF THE CONTRACT

- 3.1 The Service Provider will supply, deliver and install to the municipality the equipment listed in **ANNEXURE A** attached hereto and keep the machines in good working order and condition, by providing full maintenance.
- 3.2 The price of the contract is R2 635 113.56 inclusive of Value Added Tax for a period of 36 months;
- 3.3 The price of the contract referred to in 3.2 here above will be paid to the Service Provider in Thirty Six (36) equal monthly instalments of R73 197.60 (Seventy Three Thousand One Hundred and Ninety Seven Rand and Sixty Cents) inclusive of Value Added Tax excluding the cost per copy referred to in Clause 3.4 here under;
- 3.4 The cost per colour copy for the first year of the contract is R 0.13 and per black page R 0,43 respectively and will increase annually on 01 May with a percentage equal to the average CPI for the preceding twelve (12) months.
- 3.5 Flexibility in change of equipment / hardware based on the life span, technical or upgrade of Technology within the version of the product offered with or without prior cost escalations to the municipality towards the duration of the 36-month contract.

4. DURATION AND TERMINATION

- 4.1 This Agreement in respect of the lease of the equipment as well as servicing and maintenance of the equipment shall commence on the Effective Date notwithstanding the date of the signature by the parties, and shall endure for a period of 36 (Thirty-Six) months or termination of this Agreement, whichever occurs first.

5. USE OF THE EQUIPMENT

The equipment shall be used by the Municipality's officials and only for the purpose of printing and copying of documents.

6. MAINTAINANCE

- 6.1 The Service Provider shall be responsible for any and all maintenance required by the municipality in respect of the equipment for the duration of this agreement. Any such required maintenance shall be performed at the location where the Municipality is using the equipment.
- 6.2 The Municipality shall not remove, alter, disfigure the equipment and shall ensure that the equipment is not subjected to careless, unusually and rough usage.
- 6.3 The Service Provider agrees to provide the following at its expense:
- i. All toner, spares or other products that are necessary and/or required for proper and efficient operation of the Equipment.
 - ii. Service, maintenance and repairs, including all labour and parts that may be required to keep the equipment in good operating condition within a 7(seven) day period from the time that such equipment / hardware reaches Dido Digital Documents (Pty) Ltd offices.

7. GOOD FAITH

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 that might prejudice or detract from the rights, assets or interests of any of them.

8. OBLIGATIONS OF THE SERVICE PROVIDER

- 8.1 The Service Provider agrees to supply, deliver and install the equipment on or before 01 May 2016 to the Municipality or on a date to be agreed to by and between the parties in writing.
- 8.2 The Service Provider shall maintain the machines and via remote access (including change management through patch management procedures) provide support (technical and not technical) and monitoring of machines in good working order and condition, by providing continuous full maintenance for the duration of the agreement.

- 8.3 The Service Provider undertakes to respond and duly attend to notifications by the Municipality of the mal functioning of any of the equipment within four (4) hours from the time the said mal functioning has been reported to the Service Provider by the Municipality.
- 8.4 The Service Provider shall endeavour to conduct any inspection or perform repairs and or maintenance during the normal office hours of the municipality.
- 8.5 The Service Provider shall obtain authorisation from the Municipality well in advance should the need arise to perform any inspection, repairs and or maintenance outside the normal office hours of the municipality
- 8.6 The Service Provider shall endeavour to conduct training to employees relevant to directories for the acquired equipment / hardware

9. OBLIGATIONS OF THE MUNICIPALITY

- 9.1 The Municipality undertakes to enable the Service Provider to perform its duties in terms of this Agreement without any impediment.
- 9.2 The Municipality shall not do or permit to be done any repairs, maintenance and or anything by any third party.
- 9.3 The Municipality shall during the normal office hours of the municipality provide adequate access to the Service Provider to the respective premises of the municipality where the equipment is installed in order to inspect or perform repairs and or maintenance.
- 9.4 The Municipality shall afterhours subject thereto that a request herein has been made by the Service Provider to the Municipality well in advance provide adequate access to the Service Provider to the respective premises of the municipality where the equipment is installed in order to inspect or perform repairs and or maintenance.
- 9.5 The Municipality undertakes to ensure that there is adequate security at the respective premises of the Municipality where the equipment is installed.

- 9.6 The Municipality undertakes to promptly inform the service provider in writing send by email or fax in the event on any machine mal functions.
- 9.7 The Municipality shall for the duration of the agreement maintain full comprehensive insurance for the Equipment.

10. **INVOICING AND PAYMENT**

- 10.1 The Service Provider will invoice the Municipality on a monthly basis for the service provided under this Agreement from the Effective Date.
- 10.2 The Municipality undertakes to pay the Service Provider within 30 (Thirty) days of receipt of the monthly invoice.
- 10.3 If any outstanding amounts remain due and unpaid for a period exceeding 60 days, the Municipality shall pay interest on the overdue amount at the National Treasury Rate plus 2 %.

11. **OWNERSHIP, RIGHT TO RETENTION AND INDEMNITY**

- 11.1 The Municipality shall not be entitled to exercise any Lien over the Equipment.
- 11.2 The Equipment will at all time remain the sole property of the Service Provider and the Municipality shall have no rights thereto save for the right to use.
- 11.3 Either Party indemnifies and holds harmless the other party from and against all liabilities, damages, losses expenses and claims of nature whatsoever for personal injury and or damages to loss of any property arising out of or in respect of the indemnifying parties' agreement, except to the extent that such personal injury, or loss is attributed to the negligence and or intentional act or omission of the Party seeking indemnity.
- 11.4 In the event that any loss or damage is caused partly by negligent or intentional act or omission of any of the Parties, each Party shall be liable to the other Party only in proportion to its relative degree of fault.

12. **CONFIDENTIALITY**

Each of the Parties undertakes to the other that it, as well as its employees and/or representatives. shall at all times treat as strictly confidential all information and

documentation received from the other party pursuant to this Agreement and/or its implementation.

13. **DISPUTE RESOLUTION**

In the event of any dispute arising from this agreement, it shall be dealt with in terms of Clause 51 of Supply Chain Management Policy of Victor Khanye Local Municipality, not excluding the provisions provided for in terms of the rules /laws governing dispute resolution and employing services of the courts to remedy any dispute that may arise.

14. **TERMINATION**

14.1 Termination of Convenience:

Either Party shall be entitled to terminate the Agreement by providing the other party with ninety (90) calendar day's prior written notice to that effect but the terminating Party shall be liable for damages caused as a result of the termination.

14.2 Termination for Cause

Either Party may without prejudice to any rights and remedies that it may have accrued, terminate the Agreement upon thirty (30) calendar day's prior written notice to that effect if the other Party:

- i. Ceases to trade; or
- ii. Has a court order issued against it placing it under final liquidation.

15. **BREACH**

15.1 In the event of either of the parties ("the defaulting party") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of 14 (fourteen) days after receipt of a written notice from the other party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either:-

- i. to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations under this agreement, whether or

- not the due date of such payment and/or performance shall have arrived;
or
- ii. to cancel this Agreement as against the defaulting party; in either event without prejudice to the aggrieved party's other rights in law.
 - iii. Any amount falling due for payment by either party in terms of or pursuant to this Agreement including any amount which may be payable as damages, shall bear interest at the National Treasury Rate plus two (2) percent, calculated from the due date for payment (or, in the case of any amount payable by way of damages, with effect from the date upon which those damages are sustained) to the actual date of payment thereof, both dates inclusive.
 - iv. All costs, charges and expenses of whatsoever nature which may be incurred by either party in enforcing its rights in terms hereof, including legal costs on the scale as between attorney and client and collection commission, irrespective of whether any action has been actually instituted, shall be recoverable from the other party.

16. EARLY TERMINATION COSTS

The termination fee in respect of Clause 13, shall be calculated on the outstanding fees and charges on each of the terminating services as at the termination Date and will be determined as follows:

- i. In the event that the services are terminated by the Municipality prior to the service commencement date hereof, the Municipality shall be liable for an amount equal to the NRC, plus 6 months of the MRC.
- ii. In the event that the services are terminated by the Municipality subsequent to the service commencement date thereof and within the first 12 months, the Municipality shall be liable for an amount equal to 18 months of the MRC.
- iii. In the event that the services are terminated subsequent to the Service commencement date thereof and after the first 12 months, the Municipality shall be liable for an amount equal to the MRC for the remaining period of the agreement.
- iv. In the event that the Lease Agreement of the equipment is terminated by the Service Provider at any point, the Municipality shall not be liable for any further and or future costs payable in terms of this agreement.

17. IMPOSSIBILITY OF PERFORMANCE

The parties agree that if circumstances arise during the duration of the agreement which makes it impossible or impractical for either party to perform their duties, which circumstances arise as a result of inter alia, force majeure or any other unforeseen circumstances as envisaged in this agreement either Party shall notify the other Party in writing and within seven (7) days of the occurrence of the said unforeseen circumstances.

18. DOMICILIUM

18.1 The parties hereto choose as their respective *domicilia citandi et executandi* for all purposes of this Agreement the following addresses: -

a. The Municipality:

i. Contact Person & Telephone Number:

Mr Mvenselwa Jacob Mahlangu: 013 665 6000 082 906 6671

ii. Technical Contact Person & Telephone Number:

Mr. John Twala 013 665 6000 or 083 557 8778

iii. Physical address:

Corner Van der Walt Street & Samuel Road
DELMAS
2210

iv. Postal address:

PO Box 6
DELMAS
2210

v. Email:

munman@victorkhanyelm.gov.za
john.twala@victorkhanyelm.gov.za

vi. Fax: 013 665 2913

- b. The Service Provider
- i. Contact Person & Telephone Number:

 - ii. Physical address:
 3 Kirkby Road
 Cambridge Place,
 MCA House,
 Bedford Gardens.

 - iii. Postal address:
 PO Box

 - iv. Email:
 - v. Fax:

18.1 A notice given under this Agreement shall be valid and effective only if in writing.

18.2 Either party may, by notice to the other party, change its domicilium to another address in the Republic of South Africa.

18.3 Any notice given by a party ("the addressee") which is:-

- i. delivered by hand at the addressee's chosen physical address for the time being, shall be deemed to have been received by the addressee at the time of delivery;
- ii. posted by pre-paid registered post to the addressee's chosen postal address for the time being, shall be deemed to have been received by the addressee 5 (five) days after date of posting thereof;
- iii. transmitted by facsimile or e-mail to the addressee's chosen fax number or e-mail address for the time being, shall be deemed to have been received by the addressee on the date of transmission.

18.4 Notwithstanding anything to the contrary herein, a written notice actually received by a party shall be as valid and effective as if it had been addressed to such party's chosen *domicilium* from time to time.

19 GENERAL

19.1 The parties acknowledge and agree that:-

- i. no relaxation, extension of time, latitude or indulgence which either party ("the grantor") may show, grant or allow to the other ("the grantee") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have been already arisen or which may arise thereafter;
- ii. no alteration, variation, amendment or purported consensual cancellation of this Agreement or this clause or any deletion there from shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties hereto;
- iii. they have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental and conducive to the implementation of the provisions, terms, conditions and import of this Agreement;
- iv. neither party shall be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of the other party;
- v. this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that signs its counterpart last in time;
- vi. the rights and obligations contained herein shall bind the successors in title of the parties;
- vii. this Agreement shall be interpreted according to the laws of the Republic of South Africa and they have consented to the jurisdiction of the South Gauteng High Court, Johannesburg.

- viii. The Service Provider shall at all times retain ownership and title of all the Equipment.

20 COSTS

Each party shall bear and pay its own legal fees and disbursements of an incidental to the preparation, drawing and conclusion of this Agreement.

THUS DONE AND SIGNED AT DELMAS ON THIS THE _____ DAY OF _____ 2016.

AS WITNESSES:

1. _____

2. _____

MUNICIPALITY

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2016

AS WITNESSES:

1. _____

2. _____

SERVICE PROVIDER

ANNEXURE A**1. SCOPE OF THE AGREEMENT**

The equipment supplied and leased to the Municipality are as follows:

QTY	BRAND	MONTHLY VOLUMES
2	Samsung CLX 6260 FW	8 000
2	Samsung CLX 8640 ND	25 000
3	Samsung CLX 8640 ND	25 000
2	Samsung CLX 9352 ND	41 000
2	Sharp MX 6240	125 000
2	Sharp MX 6240	125 000
1	Sharp MX 7040N	150 000
1	Sharp MX 7040N	150 000
2	Sharp MX 1054	250 000
1	HP Designer Jet 2500 PS EMFP Plotter	A1Prints in 21 Seconds