iMQS

LICENSE & SOFTWARE MAINTENANCE AGREEMENT

CAPE AGULHAS LOCAL MUNICIPALITY

Contents

1   Definitions

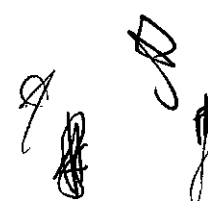|	
Agreement:	Means the agreement set out in this document, together with the annexures and any agreed written addenda hereto;
Anti-Corruption Laws	Means any applicable foreign or domestic anti-bribery and anticorruption laws and regulations, including but not limited to the Prevention and Combating of Corrupt Activities Act 12 of 2004;
Business Day	Means any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time;
Delivery Date	Means the date the Software is made available for use by the Licensee;
Designated Sites	Means any site within the boundaries of the Licensee specified in Annexure A;
Dispute	Means any dispute or difference between the Parties in connection with or arising from this Agreement in the widest sense, including without limitation any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties' respective rights and/or obligations in terms of and/or arising out of this Agreement and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement;
Documentation	Means the Licensee documentation relating to the use of and accompanying the Software in the form of manuals and function descriptions in printed or electronic form, as the same may be modified from time to time;
Effective Date	Means the **1 July 2021**;

Enhancement	Means modifying the Software after delivery to improve performance or other attributes, or to adapt the product to a modified environment;
Intellectual Property	Means all copyright, right in business names, trademarks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same;
License	Means a perpetual, non-transferable and non-exclusive right granted to the Licensee to use the Software subject to the provisions of this Agreement;
Licensee	Means Cape Agulhas Local Municipality
Licensor	Means IMQS Software (Pty) Ltd (2000/019581/07), situated at Building 4 and 5, Stellenpark Office Park, Corner R44 and School Road, Stellenbosch, Western Cape, 7599;
Maintenance and Support Services	Means the services provided under clause 3;
Modules	Means individual software applications within the Software with different functions and/or capabilities distributed separately or in conjunction with other applications as a package within the Software;
PAI Act	Means the Promotion of Access to Information Act, 2000;
Party/Parties	Means individually and collectively the parties to this Agreement;
Permitted Recipients	Means any directors, officers, employees and professional advisers to whom the receiving party discloses Confidential Information with the prior written consent of the disclosing party;

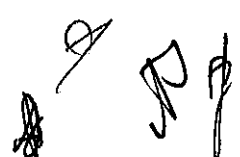|	
Server	Means the Licensee's system (both software and suitable computer hardware) that responds to requests across a computer network to provide, or help to provide, a network service;
Software	Means the software application(s), including all purchased Modules, proprietary to the Licensor, as well as Maintenance and Support services.

2   Grant of License

2.1   The Licensor hereby grants the License to the Licensee on the terms and conditions set out in this Agreement.

2.2   Read with clause 2.5, the License granted to the Licensee authorises the Licensee to operate the Software for the benefit of the Licensee on mobile devices, desktop and laptop computers for the duration of this Agreement, against receipt by the Licensor of the fee set out in clause 2.9 below.

2.3   The Licensee shall not, in the absence of prior written consent from the Licensor, which consent may be withheld by the Licensor in its sole unfettered discretion, have the right to grant third party any rights whatsoever in respect of the Software.

2.4   The Licensee, solely to enable it to use the Software, may make one archival copy and a limited number of additional copies for reasonable business use of the Software, provided that the copy shall include Company's copyright and all other proprietary notices, and that the Licensee implements and maintains a system to monitor and track the location and use of these copies. The Software delivered by the Licensor to the Licensee and the archival copy shall be stored at the Licensee's site. Any copy of the Software made by the Licensee is the exclusive property of the Licensor.

2.5   The Licensee hereby agrees and undertakes that it shall not:

2.6   decompile or reverse engineer the Software or translate the Software into any other computer language and/or make media translations thereof and/or make any attempt to do any of the aforesaid; nor

2.7   other than for purposes of clause 2.4, copy nor permit any third party to copy the Software; nor

2.8   print the source code or make any attempt to derive the source code of the Software; nor

2.9   modify, enhance, alter or make derivative works of the Software, or make any attempt to do any of the aforesaid; nor

2.10   allow any third-party access to the Software for the purposes of carrying out any of the activities prohibited in this clause.

2.11   Without prejudice to any other rights or remedies which the Licensor may have in law, all proprietary rights in and to any modifications, Enhancements or alterations made to the Software or in any related product developed because of any breach of clause 2.5 shall vest in the Licensor.

2.12   The Licensee shall allow the Licensor, upon reasonable written notice, access to its premises to audit the Licensee's compliance with the Agreement. The Licensee agree to cooperate with the Licensor's audit and provide reasonable assistance and access to information. The Licensor shall not be responsible for any of the Licensee's costs incurred in cooperating with an audit.
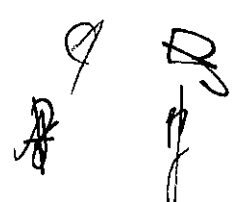
2.13   Each copy of the Software in the possession of, or under the control of the Licensee, shall be subject to the provisions of this Agreement and, as such, to the same restrictions on use and disclosure as are contained in this Agreement.

2.14   All Software Enhancements supplied to the Licensee from time to time shall be subject to the provisions of this Agreement, and, as such, to the same restrictions on use and disclosure as are contained in this Agreement.

2.15   Upon the Delivery Date, the relevant Documentation may be delivered in either printed or electronic form.

2.16   The fees payable by Licensee for the License is as set out in Annexure "B".

2.17   In consideration for the provision by the Licensor of the Maintenance and Support Services to the Licensee in terms of this Agreement, the Licensee shall pay to the Licensor an annual in advance maintenance fee in accordance with Annexure "B".

2.18   It is specifically agreed that in the event that the Licensee terminates its obligation to pay the annual maintenance fee in terms of this Agreement and thereafter requests the renewal thereof, the Licensee shall be obliged to effect a reinstatement payment, in advance, the amount of which shall be determined by the Licensor at the relevant time and which amount shall be paid in addition to the annual maintenance fee then applicable. Once the reinstatement fee has been assessed, Maintenance and Support Services for the year following the reinstatement period may be purchased for an additional fee as calculated based upon how long the Software has been unsupported.

2.19   In order for the Licensor to be able to perform the Maintenance and Support Services in terms hereof, the Licensee shall, at its own expense:

2.19.1   always provide the Licensor with access to the Software;

2.19.2   grant the Licensor's authorised personnel access to the Designated Sites and, if necessary, access to working tools such as hardware, telephone, printer, copier, internet connection, and the like;

2.19.3   use the version of the Software licensed in terms of the Agreement;

2.19.4   ensure that only competent and skilled personnel properly trained by the Licensor in terms hereof will operate and use the Software in accordance with the Documentation;

2.19.5   keep the Software at the Designated Sites, and not remove it (in whole or in part) from such sites without the Licensor's prior written consent, which consent the Licensor shall provide or withhold in its absolute discretion;

2.19.6   comply with the provisions of any law which may be applicable to the possession and/or use of the Software and shall apply for and obtain any licences, certificates, exceptions or the like which may be required in connection with the use or possession of the Software; and

2.19.7   take all necessary precautions to safeguard the Software from any loss, destruction or damage.

2.20   The Parties shall at all times co-operate with one another to facilitate the implementation of the Maintenance and Support Services.

2.21   Each Party shall nominate in writing one person, who shall be deemed to have authority to bind that Party in all respects relating to and who will be responsible for overseeing the day to day practical implementation of the Maintenance and Support Services.

2.22   The liaison managers shall liaise with one another, and in the event of problems arising in relation to the implementation of the Maintenance and Support Services, shall meet with each other, with a view to achieving a mutually acceptable solution to such problem.

3   Maintenance and Support Services

3.1   The Licensor shall provide to the Licensee:

3.2   telephonic Software support during the hours 07:30 - 17:30, Mondays through Fridays, excluding South African public holidays through a support line number – 021-880-2710;

3.3   on-site support of Software problems, at the Designated Sites, with reaction time based on the time of day and distance to travel to the Designated Site. On-site support will only be available once all attempts to provide remote support and troubleshooting have been unsuccessful;

3.4   a comprehensive User and Security Management system that will control user level access to the Software;

3.5   the management and resolution of Software problems through an on-line web ticket (logging) system with full customer relations functionality. Each ticket will be assigned to a responsible person within 24 hours. Resolution of the problem is dependent on the severity, but user feedback via the logging system will be done within 48 hours. Support tickets can be logged at helpdesk@imqs.co.za;

3.6   the right to certain Enhancements at no extra charge as and when they become available;

3.7   regular notification of Enhancements distributed to an authorised representative of the Licensee;

3.8   initial training of no more than 10 (ten) users per Modules as part of the implementation process;

3.9   remote interactive desktop support (subject to bandwidth availability as well as Licensee's Server access capabilities);

3.10   access to the most recent minimum system specifications;

3.11   access to a formal documented Licensor web module change request procedure (available from the Licensor's account manager on request) for the Licensee to request any changes to the Software. These changes will be actioned via an accepted change request quotation;

3.12   access to Licensor's Software technical team to import any new data into the different Modules. These data imports will be actioned via an accepted quotation; and

3.13   access to Licensor's Software training team for additional, intermediate and advanced training on all the existing Software. These training requests will be actioned via an accepted quotation.
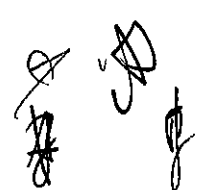
4   Services Not Included Under This Agreement

4.1   None of the services below will be provided to the Licensee under this Agreement:

4.2   support of any software other than the Software;

4.3   attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in the Documentation; and

4.4   repairs or replacements necessitated by accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of the Software, assistance on hardware usage or service calls necessitated by causes external to the Software, such as failures in the hardware on which the Software is operational;

5   Hardware Requirements

The Licensee agrees to implement and/or maintain the minimum hardware and network requirements as outlined in Annexure "C and D" to ensure the Software functions in an effective and efficient manner. These requirements include all depots and satellite offices where the Software will be installed.

6   Training of Personnel

6.1   The Licensee agrees to make suitable staff available during the term of the Agreement to be trained in the effective use of the Software.

6.2   Training will either be classroom based or provided remotely, at the absolute discretion of the Licensor. The Licensor will furthermore elect whether to provide individual or group-based training.
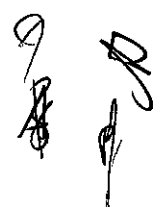
6.3   In the event that the Licensor chooses to provide classroom-based training, the Licensee will be responsible to provide a suitably equipped IT training facility for classroom sessions. At a minimum, such facility is to cater for the requirements set out in Annexure "C".

6.4   Training will be provided at no additional cost to the first ten (10) users, thereafter the Licensor will provide a quotation for additional training sessions.

7   Renewal of Agreement

This Agreement will remain in force for an initial period not exceeding **30 June 2022** starting from the **Effective Date** The term may be extended for such period and on such conditions agreed upon by the Parties.
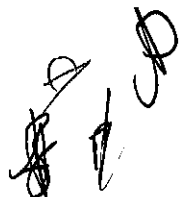
8   Renewal Charges and Payment Terms

8.1   On each anniversary of the Effective Date, the annual maintenance fee set out in Annexure "B" shall increase by not more than 10% (ten percent).

8.2   The aforesaid fee is payable in advance on the last day of the month preceding the anniversary of the Effective Date.

8.3   The Licensor reserves the right to suspend the rendering of any service and/or the access of the Licensee to the Software on notice to the Licensee if any amount, being due and payable by the Licensee in terms of this Agreement, is in arrears. The Licensor reserves the right to suspend the rendering of any service and/or the access of the Licensee to the Software on notice to the Licensee if any amount, being due and payable by the Licensee in terms of this Agreement, is in arrears. In addition, the Licensor will charge interest on the outstanding amount at a rate of 2% (two percent) above the base rate charged by its then current bankers from time to time, as evidenced by any manager of such bank, whose authority it shall not be necessary to prove. Such interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded monthly in arrears and the Licensee agrees and undertakes to pay such interest, which it hereby accepts as fair and reasonable, on demand.

9 Limited Warranty and Infringement of Third-Party Intellectual Rights

9.1 This warranty extends only to the Licensee, and no third party shall have the right to make any claim or assert any rights hereunder.

9.2 The Licensor warrants that for a period of one hundred and twenty (120) days from the Delivery Date (the "Warranty Period"):

9.2.1 the Software will perform substantially in accordance with the Documentation; and

9.2.2 the Software is properly recorded on the media or in the files to be downloaded.

9.3 The Licensor does not warrant that the operation of the Software will be uninterrupted or error free. This warranty is void if failure of the Software has resulted from accident, abuse, or misapplication or from the End User having modified the Software or used it for a purpose or in a context other than the purpose or context for which it was designed. Furthermore, this warranty will not apply in the event of the Licensee breaching any of the obligations set out in clause 2.5, or if the Licensee attempts to correct or allows any third parties to correct or attempt to correct the Software.

9.4 The Licensee must report any alleged breach of the warranties contained in this clause 9 to the Licensor in writing during the Warranty Period. The Licensee's exclusive remedy and the Licensor's sole liability with regard to a breach of warranty shall be as follows: (A) with respect to any alleged breach of the warranty set forth in clause 9.2.1, at the Licensor's absolute option and expense, to either: (i) repair or replace the non-conforming Software; or (ii) return the License and maintenance fees paid to the Licensor (if any) with respect to the non-conforming Software; and (B) with respect to any alleged breach of the warranty set forth in 9.2.2, to replace the defective media.

9.5 The Licensor does not warrant that:

9.5.1 the Software will meet the Licensee's requirements; or

9.5.2 the Software will operate with hardware or software, except as expressly specified in the Documentation; or

9.5.3 operation of the Software will be uninterrupted or error free.

9.6 Except for the limited warranty provided above, the Software and the Documentation are provided 'as is'. All other warranties, whether express or implied, including but not limited to implied warranties of merchantability, fitness for a particular purpose, tile and non-infringement are hereby disclaimed.

9.7 The Licensor shall pay those costs and direct damages finally awarded against the Licensee in connection with any claim by a third party that the Software directly infringes any Intellectual Property rights recognized as such under applicable law (or those costs and damages agreed to by the Licensor in a written monetary settlement) and costs of defence incurred by the Licensee in connection therewith, provided that:
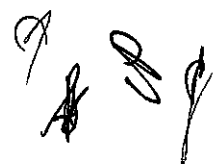
9.7.1 the Licensee provides the Licensor with prompt written notice of any such action or claim;

9.7.2 the Licensee will permit the Licensor to assume and control the defence and settlement of any such action or claim, at the Licensor's expense;

9.7.3 the Licensee will not prejudice the defence of the action or claim, nor will the Licensee make any admission as to liability nor compromise or agree to any settlement of any such action or claim without the prior written consent of the Licensor; and

9.7.4 the Licensee will provide the Licensor with such assistance, documents, authority and information as the Licensor may reasonably require in relation to the action or claim and defence or settlement thereof.

9.8 Notwithstanding the foregoing, the Licensor shall have no liability to the Licensee for any claim that:

9.8.1 arises out of any unauthorized use, reproduction, or distribution of the Software;

9.8.2 arises out of any modification or alteration of the Software by anyone other than the Licensor;

9.8.3 arises out of the use of the Software in combination with any other software or equipment not approved in writing by the Licensor; or

9.8.4 would have been avoided by use of the then-current release of the Software or if the Licensee had followed the Licensor's reasonable written instructions.

9.9 If the Software becomes, or in the Licensor's opinion is likely to become, the subject of an Intellectual Property infringement claim, the Licensor may, at its own expense and option, elect to either:

9.9.1 procure the right for the Licensee to continue using the Software in accordance with the provisions of this Agreement;

9.9.2 make such alterations, modifications or adjustments to the Software so that the infringing Software or Documentation becomes non-infringing without incurring a material diminution in performance or function;

9.9.3 replace the Software with a non-infringing substantially similar substitute; or

9.9.4   If neither clause 9.9.1, 9.9.2 nor 9.9.3 can be achieved after the exercise of commercially reasonable efforts, terminate this License and refund to the Licensee all amounts paid by the Licensee to the Licensor as license fees with respect to the affected Software.

9.10   The clauses above state the Licensor's entire liability, and the Licensee's sole remedies, for any infringement or alleged infringement of third-party Intellectual Property rights in relation to the Software and the Documentation.

10   Data Ownership

10.1   Data ownership rests with the Licensee, IMQS does not support the concept of 'locking-in data'. The Licensee has the option to host this web-based solution within their network (intranet) or IMQS can provide the hosting as a service. During the License period the client has access to our operational team to assist with system troubleshooting and user support. Post-contract (on Expiry of the License) period, the Licensee will have one additional month of access to the system and data (if hosted on-site), but without access to the general enhancements and software support.
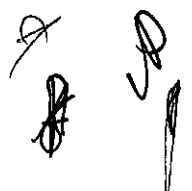
10.2   Should the Licensee opt not to renew the License, he will request in writing, from the Licensee, to export the data in a format(s) as indicated below:

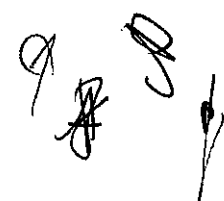MS SQLite files

Shapefiles

MS Excel files

CSV Files

11   Confidential Information

11.1   "Confidential Information" for purposes of this Agreement means the content of this Agreement and all discussion associated therewith, including information marked or otherwise identified in writing by a party disclosing the Confidential Information as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. Confidential Information does not include information which:
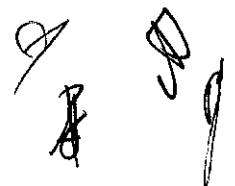
11.1.1   is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or

11.1.2   subsequently becomes lawfully part of the public domain by publication or otherwise; or

11.1.3   is or becomes available to the receiving party from a source other than the disclosing party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the receiving party; or

11.1.4   is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed.

11.2   The Parties acknowledge that the Confidential Information is a valuable, important and unique asset of the disclosing party and that the disclosing party may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with this Agreement.

11.3   All Confidential Information disclosed by the disclosing party to the receiving party or which otherwise comes to the knowledge of the receiving party, is acknowledged by the receiving party:

11.3.1   to be proprietary to the disclosing party; and

11.3.2   not to confer any rights of whatsoever nature in such Confidential Information on the receiving party.

11.4   The receiving party irrevocably and unconditionally agrees and undertakes:

11.4.1   to treat and safeguard the Confidential Information as strictly private, secret and confidential;

11.4.2   not to use or permit the use of the Confidential Information for any purpose other than for which it was intended and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the disclosing party or otherwise use it to the detriment of the disclosing party;

11.4.3   except as permitted by this Agreement, not to disclose, publish or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, which consent may be granted or withheld in the sole and absolute discretion of the disclosing party;

11.4.4   to keep all Confidential Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent unauthorised access to Confidential Information by third parties;

11.4.5   not to use the Confidential Information, whether directly or indirectly, for the receiving party's benefit or the benefit of any person other than the disclosing party; and

11.4.6   not to decompile, disassemble or reverse engineer the whole or any part of Confidential Information.

11.5   The receiving party shall be entitled to disclose the Confidential Information only to Permitted Recipients, and then only to the extent that such disclosure is strictly necessary and on a "need to know" basis.

11.6   The receiving party shall, both before and after the disclosure of any Confidential Information to a Permitted Recipient, inform such Permitted Recipient of, and take all practical steps to impress upon the Permitted Recipient, the secret and confidential nature of the Confidential Information and the receiving party's obligations under this Agreement.

11.7   The receiving party shall be responsible for procuring that the Permitted Recipients abide by the provisions of this Agreement and agree to be bound by the confidentiality undertakings given to the disclosing party by the receiving party in this Agreement. The receiving party shall be responsible for any breach of the terms of this Agreement by any Permitted Recipient.

11.8   The receiving party shall (if requested to do so by the disclosing party) procure that the Permitted Recipients give a written undertaking in favour of the disclosing party regarding the Confidential Information on substantially the same terms and conditions contained in this Agreement.

11.9   The receiving party's failure to obtain receipt of the written undertaking referred to in clause 10.8 shall in no way detract from the receiving party's obligations in terms of this Agreement.

11.10   The receiving party shall, at its own expense, within 5 (five) Business Days of written demand from the disclosing party:

11.10.1   return or destroy (as stipulated by the disclosing party), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the receiving party or by a Permitted Recipient without keeping any copies or partial copies thereof;

11.10.2   destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents prepared by the receiving party or by any Permitted Recipient which contain or otherwise reflect or are generated from the Confidential Information, in part of in whole;

11.10.3   delete or procure the deletion of all Confidential Information from any computer, word processor or other device in the possession or control of the receiving party or any Permitted Recipient; and

11.10.4   confirm in writing to the disclosing party that the receiving party and all Permitted Recipients have complied with the provisions of clauses 10.10.1 to 10.10.3.

11.11   The receiving party shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the receiving party or any Permitted Recipient is subject. For the avoidance of doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.

11.12   In the event that the receiving party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:

11.12.1   advise the Disclosing Party thereof in writing prior to disclosure, if possible;

11.12.2   take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

11.12.3   in the case of any disclosure required in terms of the PAI Act, apply the principles of Chapter 4 of the PAI Act in order to avoid and/or limit the extent of any such disclosure;

11.12.4   afford the disclosing party a reasonably opportunity, if possible, to intervene in the proceedings;

11.12.5   comply with the disclosing party's reasonable requests as to the manner and terms of any such disclosure; and

11.12.6   notify the disclosing party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

11.13   The provisions and restrictions contained in this clause 10 shall continue in force for a period of 2 (two) years following the expiration or termination of the term of the Agreement.

12   Dispute Resolution

12.1   Should any Dispute arise out of, or relating to, this Agreement, the Parties shall use all reasonable endeavours to resolve the Dispute amicably within a period of 10 (ten) Business Days from the date on which the Dispute arose (or such longer period as may be agreed between the Parties).

12.2   If the Dispute is not resolved amicably within the period contemplated in clause 11.1, either Party shall be entitled to refer the Dispute to arbitration on written notice to the other Party. The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 10 (ten) Business Days of the written notice referring the Dispute to arbitration, the arbitration shall be

conducted in accordance with the AFSA's Commercial Rules for Domestic Arbitration in force at the time of the Dispute.

12.3 Unless agreed otherwise in writing by the Parties, the arbitration shall be administered by the Parties and the number of arbitrators shall be 1 (one). The place of the arbitration shall be Sandton, Johannesburg. The governing procedural law of the arbitration shall be the law of South Africa. The arbitrator shall have the same remedial powers as a court of law in South Africa would have, were it adjudicating the Dispute. The arbitrator shall deliver an award together with written reasons within 20 (twenty) Business Days from the date upon which the arbitration ends. The decision of the arbitrator shall be final and binding, unless a Party exercises its right to appeal in terms of clause 11.4.

12.4 Either Party is entitled to appeal against the decision of the arbitrator, subject to the following:

12.4.1 either Party shall be entitled to appeal against the whole or part of an award made by the arbitrator, provided that a notice of appeal is delivered to the other Party within 15 (fifteen) Business Days of delivery of the award;
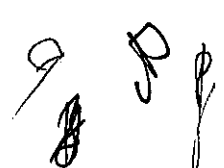
12.4.2 if a Party delivers a notice of appeal, the other Party shall be entitled to cross-appeal against the whole or any part of an award made by the arbitrator, provided that a notice of cross-appeal is delivered to the appealing Party within 15 (fifteen) Business Days after delivery of the notice of appeal;

12.4.3 the notice of appeal or cross-appeal shall state whether the whole or only part of the award is appealed against and, if only part of the award is appealed against, the notice of appeal or cross-appeal shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the appeal or cross-appeal is founded;

12.4.4 unless agreed otherwise in writing by the Parties, the appeal shall be determined by a panel of 3 (three) appeal arbitrators;

12.4.5 within 10 (ten) Business Days after service of the expiry of the period specified in clause 11.4.2, the Parties shall each nominate 1 (one) appeal arbitrator and jointly nominate a third appeal arbitrator. If the Parties fail to reach agreement on the third appeal arbitrator within the said period (or such extended period as the Parties may agree to) then the 2 (two) appeal arbitrators nominated by each of the Parties shall be requested to nominate the third appeal arbitrator;

12.4.6 unless agreed otherwise in writing by the Parties, the appeal shall be administered by the Parties and the place of the appeal shall be Sandton, Johannesburg. The governing procedural law of the appeal shall be the law of South Africa. The appeal panel shall have the same remedial powers as a court of law in South Africa would have, were it adjudicating the Dispute. The decision of the majority of the appeal panel shall be binding

on the Parties. Unless agreed otherwise in writing by the Parties, the appeal panel shall deliver an award together with written reasons within 30 (thirty) Business Days from the date upon which the arbitration ends, and such determination shall be final and binding on the Parties.

12.5 Nothing in this clause 11 shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction.

13 Breach, Termination and Limitation of Liability

13.1 Should either Party (*"Defaulting Party"*) materially breach any of the provisions of this Agreement, then the other Party (*"Aggrieved Party"*) will give the Defaulting Party 10 (ten) Business Days' written notice or such longer period of time as the Aggrieved Party may specify in the notice, to remedy the breach. If the Defaulting Party fails to comply with the notice, the Aggrieved Party may:

13.1.1 claim immediate payment and/or performance by the Defaulting Party of all the Defaulting Party's obligations that are due for performance; or

13.1.2 cancel this Agreement upon written notice to the Defaulting Party;

In either event without prejudice to the Aggrieved Party's right to claim damages or to exercise any other rights that the Aggrieved Party may have under this Agreement or in law.

13.2 Without detracting from the provisions of clause 12.1, the Aggrieved Party may summarily cancel this Agreement at any time by giving to the Defaulting Party notice of the cancellation if:
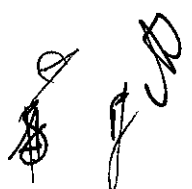
13.2.1 the Defaulting Party commits a material breach of this Agreement which cannot be remedied;

13.2.2 the Defaulting Party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory sequestration, winding-up, business rescue or the equivalent of any of these;

13.2.3 a judgment of a substantial nature against the Defaulting Party in respect of which no appeal lies or in respect of which the period for lodging an appeal (excluding any period to seek condonation) has expired and remains unsatisfied for a period of at least 20 (twenty) Business Days; or

13.2.4 the Defaulting Party makes or offers to make a general assignment or any arrangement or composition with or for the benefit of its creditors generally (or any class of its creditors) for releasing it wholly or partially from its debts.

13.3 Upon termination, the License shall terminate and the Licensee agrees to promptly uninstall, destroy or return to the Licensor all copies of the Software and Documentation and to certify in writing that all known copies, including backup copies, have been uninstalled, destroyed or returned to the Licensor. All provisions relating to confidentiality, the Licensor's ownership and proprietary rights, limitations of liability, disclaimers of warranties, waiver, governing law and arbitration shall survive the termination of this Agreement.

13.4   In no event shall either Party be liable for any indirect, consequential, incidental, special, or any other unforeseeable damages or losses of any kind arising under any theory of liability (including delict), including without limitation damages or losses for loss of profits, loss of production or expected savings, business interruption, loss of goodwill, loss or corruption of business data or information.

13.5   Except for Licensor's indemnification obligations herein as regards infringement of third-party Intellectual Property rights, Licensor's maximum aggregate liability under this Agreement (regardless of the form of action, whether in contract, delict, or otherwise) shall be limited to direct damages not to exceed the amount of fees paid by the Licensee to the Licensor for the License to which a specific claim relates.

14   Notices and *Domicilium*

14.1   The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses:
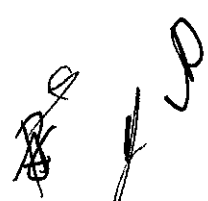
If to **Licensor:**

Building 4 and 5, Stellenpark Office Park,

Corner R44 and School Road,

Stellenbosch,

Western Cape, 7599

Email: Annatjie.taljaard@imqs.co.za

Name: Annatjie Taljaard

If to the **Licensee:**

Cape Agulhas Local Municipality

1 Dirkie Uys Street, Bredasdorp

Email: Abdulazizj@capeagulhas.gov.za

Name: Mr Abdul Aziz Jacobs

Designation: Director - Infrastructure Services

Tel: 028 425 5500

Provided that a Party may change its *domicilium* or its address for the purposes of notices by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

14.2   All notices to be given in terms of this Agreement will be given in writing, in English, and will:

14.2.1   be delivered by hand or sent by email;

14.2.2   if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and

14.2.3   if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day that
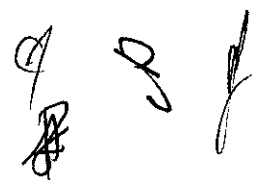
is not a Business Day will be presumed to have been received on the following Business Day.
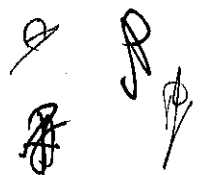
14.3 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 13.

15 General Provisions

15.1 This Agreement, together with the and annexes thereto, constitutes the entire Agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement

15.2 No variation, inclusive of this clause 14.2, or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

15.3 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15.4 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid, lawful, and enforceable. If any term or condition held to be invalid, unlawful, or unenforceable is capable of amendment to render it valid, lawful, or enforceable the Parties agree to negotiate an amendment to remove the invalidity, unlawfulness, or unenforceability.

15.5 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all Disputes, actions and other matters relating thereto will be determined in accordance with such law.

15.6 Subject to clause 11, the Parties hereby consent and submit to the non-exclusive jurisdiction of the Gauteng Division of the High Court, Johannesburg Local Division, in any Dispute arising from or in connection with this Agreement.

15.7 Notwithstanding termination of this Agreement any clause which, from the context, contemplates on-going rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.

15.8 Subject to due compliance with clause 14.9, neither Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any exceptional event or circumstance beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion, industrial dispute (not being an industrial dispute involving the employees of the Party in question) or civil commotion ("Event of *Force Majeure*").

15.9 In the event of either Party being so delayed or prevented from performing its obligations, such Party shall:

15.9.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

15.9.2 use all reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under this Agreement; and

15.9.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

15.10 If a Party is prevented from performing its obligations by an Event of *Force Majeure* for more than 15 (fifteen) Business Days, either Party may terminate this Agreement by notice to the other.

15.11 Compliance with Anti-Corruption Laws is a matter of fundamental importance for the Parties. Accordingly, each Party, including its employees, agents, consultants, contractors and subcontractors, shall:

15.11.1 act in accordance with all Anti-Corruption Laws on bribery and corruption;

15.11.2 not do or omit to do anything likely to cause the other Party to be in breach of clause 14.11.1; and

15.11.3 not give, promise, receive or request any bribes (financial or other advantage), including but not limited to in relation to any public official;

15.12 A Party shall promptly notify the other Party of any allegation of fraud, bribery or corrupt practices made against first mentioned Party in court, arbitration or administrative proceedings, or if any investigation is commenced in respect of such allegations, at any time during the term of this Agreement.

15.13   Each Party (the "Defaulting Party") hereby indemnifies the other Party and its directors, officers, employees, agents and affiliates against all losses which they may suffer as a result of a breach or deemed breach of clause 14.11 by the Defaulting Party.

15.14   The Parties agree that neither Party shall, during the subsistence of this Agreement, or within a period of 12 (twelve) months thereafter, directly or indirectly solicit for employment, or contract with, any employee of the other who has been involved at any time in the performance of this Agreement, or discourage any such employee from continuing to be so employed or contracted, while such employee remains employed or contracted by the other Party.

15.15   No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any applicable law. Each remedy shall be cumulative and in addition to every other remedy given under this Agreement or under any existing or future applicable law. The election of any one or more remedy by one of the Parties' shall not constitute a waiver by such Party of the right to pursue any other remedy.

15.16   Save as otherwise expressly provided in this Agreement, neither Party may assign this Agreement or cede any of its rights or delegate any of its obligations without the other Party's prior written consent.

15.17   Each Party must pay its own costs (direct or otherwise) in relation to the negotiation, preparation, and execution of this Agreement.

15.18   This Agreement shall be binding on and shall inure for the benefit of the successors and permitted assigns of each of the Parties.
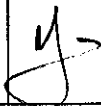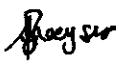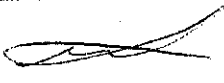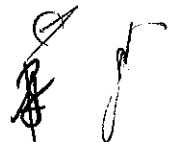
16   Signature

The Licensee and the Licensor by their signatures hereto acknowledge that they have read, understood and agree to be bound by the terms and conditions of this Agreement.

FOR LICENSOR				
NAME	DESIGNATION	SIGNATURE	DATE	PLACE OF SIGNATURE
Annatjie Taljaard	Head of Operations	*Taljaard*	21|10|21	Stellenbosch

WITNESSES				
NAME	DESIGNATION	SIGNATURE	DATE	PLACE OF SIGNATURE
Fiona Johnson	Administration Officer	*signature*	21|10|21	Stellenbosch
ANADINE ROOMSEN	FINANCIAL CLERK	*signature*	21|10|21	STELLENBOSCH

FOR THE LICENSEE				
NAME	DESIGNATION	SIGNATURE	DATE	PLACE OF SIGNATURE
Eben Oliver Phillips	Municipal Manager		19.10.2021	Bredasdorp

WITNESSES				
NAME	DESIGNATION	SIGNATURE	DATE	PLACE OF SIGNATURE
Abdul Aziz Jacobs	Director: Infrastructure Services	*signature*	19/10/2021	Bredasdorp
Willem von Zyl	Chief Information Officer	*signature*	19/10/2021	Bredasdorp

Annexure B: Minimum Recommended Desktop/Laptop Requirements

Processor

- Workstation minimum: Intel Core i3, recommended: Intel Core i5 or better.

Operating System

- Microsoft Windows 7 Business 32 bit or 64 bit or later
- Microsoft Windows XP Professional SP3 (only in exceptional circumstances is Windows XP supported)

Hard Disk

- 400 MB Free Hard Disk Space for Program Installation.
- If data is to be stored on the workstation, up to 50GB of additional disk space may be required for data and imagery, alternatively the data can be stored on an external USB drive and mapped to it from IMQS.
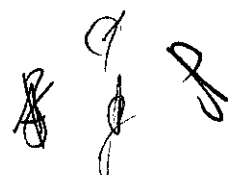
System RAM Requirement

- Windows 7: 4GB, recommended 6GB or more
- Windows XP: 2GB, recommended 4 GB or more (only in exceptional circumstances is Windows XP supported)

Peripheral Components

- Alternative to network installation: Minimum CD-ROM Drive, recommended DVD-ROM drive
- Minimum: 1024x768, 16-bit colour graphics card, recommended 1280x1024, 24-bit colour graphics card
- Mouse with wheel
- 10/100 Network Interface Card (Recommended 1GB NIC)
- USB2 port or better

Software

- Adobe Acrobat
- Google Chrome
- Microsoft ODBC Driver (Part of Windows standard install)
- Borland Database Engine (Provided on IMQS Installation CD)
- Postgres ODBC Client (Provided on IMQS Installation CD)

- IMQS (Provided on IMQS Installation CD)
- For SQL Server modules – MSSQL Native Client for MSSQL 2008R2 (sqlncli-X86.msi / sqlncli-X64.msi) or an instance of MSSQL full or express with the native client installed

Minimum Recommended Server Requirements

Processor

- Xeon Processor of 2 GHz or better. Recommended Quad core processors or better.

  (If running on virtual server then minimum 2 cores are required)

Operating System

- Microsoft Windows Server 2003 SP1 or later
- Microsoft Windows Server 2008 R2 or later (recommended)

Hard Disk

- 400 GB Hard Disk for OS, DBMS, Database and Applications.
- 800 GB Hard Disk for installation of application, maps, photo's, documents and data. Can be on a SAN.
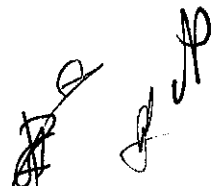
System RAM Requirement

- Minimum 8GB, expandable to 24 GB

Peripheral Components

- 1 GB Network Interface Card
- (1 GB speed required due to large image and archive files transferred to IMQS users.)

Software

- PostgreSQL 9.0 or later
- Web Server (Microsoft IIS or Apache (2.0 or later)
- IMQS (Configured by Installer, on Installation CD)
- MS SQL 2008 R2 Standard or Enterprise Edition (can be SQL Express with adv. Services 2008R2 (free) if database size will not exceed 10GB)

Network Requirements

Workstation users will require-

- A Windows share with read/write access to the Server location of the data in the form of a mapped network drive as well as http access to the Server.
- A Windows share with read access to the Server location for the aerial photos in the form of a mapped network drive.
- A Windows share with read/write access to the Server location for access to IMQS documents in the form of a mapped network drive.

Internet Requirements

- Data Updates and Enhancements via the internet, average download up to 200MB at a time. Large updates scheduled after 6pm and before 6am.
- Web Server accessible from the internet via https/authentication.
- VPN access (required)
- Access to Server via remote desktop with admin rights (recommended)

Database Requirements

- Paradox (Part of IMQS installation)
- PostgreSQL (IMQS module specific)
- MS SQL Standard or Enterprise Edition 2008 R2 – requires Client Access License (CAL) (IMQS module specific) (can be SQL Express with adv. Services 2008R2 (free) if database size will not exceed 10GB)

Mapping Engines

- Albion (http://www.gis.co.za/software/products/albion.html)
- MapServer (http://mapserver.org/)
- SharpGIS (http://sharpgis.net/)

Allowances

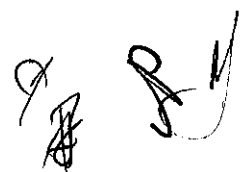| Item	Charge Units	Rate
Flights	Per Flight	Billed at cost
Accommodation	Per Night	R895,00
Meals	Per Meal	R200,00

2. JOB DESCRIPTIONS

Analysts (Business and Systems

The Analyst (Business and Systems) will provide the expertise to support the client in translating business needs into software requirements. The analyst will thereby enable the development team to create concise and robust code and in doing so they will collectively develop, maintain and support cutting edge solutions.

The Analyst's principal function is to scope, discover and describe requirements and ensure that our software solutions, based on the company's vision and strategic direction, adhere, surpass and compliment the client's specifications. The Analyst will help with user requirements, scope of work, functional decompositions, storyboards, business and data flow, business rules, system design, writing of specifications and contribute to the designing, building, testing and implementing of applications as needed, on a project by project basis.

His/her skill includes

- Understanding business process management and business requirements of the customers and translating them into specific software requirements.
- Documenting and analysing the required information and data.
- Understanding the technical designs as well as the specifications.
- Evaluating the information gathered through workshops and surveys, business process description and task analysis.
- Effectively communicating with development teams and clients to deliver functional requirements like GUI, screen and interface designs.
- Devising possible solutions to predicted problems, evaluating other options.
- Reacting to problems and coming up with possible solutions.
- Reviewing deliverables prepared by the team before passing to client.
- Ensuring project documents are complete, current, and stored appropriately.

Developer

The Application Developer's principal function is to develop bespoke solutions, based on the company's vision and strategic direction, as well as client's specifications. The Application Developer will help with writing specifications and designing, building, testing, implementing and sometimes supporting applications using the best of breed programming languages and development tools as needed, on a project by project basis. He/she works closely with software engineers, business and systems analysts, writing programmes according to their specifications.

His/her skill includes

- Interpreting written business requirements and technical specification documents;
- breaking down a program specification into its simplest elements and translating this logic into a programming language;
- devising possible solutions to predicted problems, evaluating other options;
- working as part of a team to develop/code a specific section of the programme;
- combining all elements of the programme design, and testing it;

Quality Assurance

The main role of the Test Analyst is to ensure the system integrity, quality and completeness of all software that is delivered to the client. He/she will evaluate, and test new or modified software and software development procedures used to verify that the programme functions according to user requirements and conforms to company guidelines and standards. He/she will, therefore, help define, create and manage test standards, design, create and maintain test cases and facilitate the management thereof, follow the company processes and use test case software to ensure software integrity.

His/her skills will include:
- Implementing the testing processes as part of the SQA.
- Ensuring that high quality and accuracy is maintained through to software release.
- Preparing and maintaining test plans for use on automated testing tools.
- Preparing a test plan and test scripts to test each software component and demonstrate the business condition under test and the expected result.
- Providing feedback to the development team and ensuring the work is carried out in accordance with the schedule and the quality requirements.
- Assurance & Test Strategy in pursuing assurance and test activities.

- For all agreed Projects, produce the System Integration Test stage plan in compliance with the overall test strategies.
- Providing input to the development team in respect of higher-level requirements and documentation.
- Producing the system test deliverables (system test plan, system test specification, system test scripts, system test data etc.) to the agreed timescale, budget and quality
- Planning and executing system testing, both scripted and unscripted
- Input to the management of defects in line with agreed procedures
- Taking part in the build and release management process with the development teams
- Producing and reporting assurance and test activities on a periodic and ad-hoc basis.
- Escalating project exceptions to the Project Manager
- Aiding and assisting other test and project team members

Business Intelligence (BI)

The Business Intelligence Specialist's role is to strategically design and implement BI software and systems, including integration with databases and data warehouses. This includes selecting, blueprinting, gathering requirements, designing, and rolling out BI solutions to end users. The Business Intelligence Specialist is also responsible for ensuring high levels of BI availability through support functions and in-depth testing.

His/her skills will include:
- Designing, coding, testing, and documenting all new or modified BI systems, applications and programmes.
- Developing graphs and portal interfaces.
- Assisting in the design of databases and data warehouses to ensure interoperability with BI solutions.
- Analysing user requirements and, based on findings, design functional specifications for BI front-end applications.
- Producing ETL design guidelines to ensure a manageable ETL infrastructure for the BI system.

Data Integration

The Data Integration Specialist's role is to ensure that customer data is created, imported, verified and maintained to a set of data standards. This process includes the identification of incorrect data received from various sources and taking the appropriate steps to fix it. He/she also acts as a resource in identifying and procuring information from other sources to be included in the client's data set.

His/her skills will include:

- Importing spatial data into databases and linking it up with the associated attribute information.
- Assisting end users with various data queries.
- Extracting and loading information into the appropriate databases.
- Ensuring Data Updates are available to clients.
- Facilitating data queries.

Training

Trainers design and deliver training programmes for the client based on client and software needs. The trainers will be responsible for compiling and presenting user and product specific training on a class or individual basis.

His/her

skills will include:

- carrying out training needs analyses;
- defining the skill-sets needed to perform different roles;
- carrying out performance assessments to determine the skills gap between current and desirable learner skill levels;
- ensuring the learning environment and resources support learner needs;
- designing course materials and other documents such as hand-outs, manuals and exercises;
- preparing the learning environment and resources, including setting up IT equipment where appropriate;
- maintaining appropriate records of learner development and also resource allocation.

Implementation Analyst (Technical Support Engineer)

The Implementation Analyst (Technical & Spatial Support Engineer) will provide the expertise to support the physical infrastructure of the client, including Servers, Desktops, Laptops and Networks to facilitate the installation of applications and the support thereof.

- He/she works closely with the client IT staff and other technical support staff with software installations, user accounts and access and support for the client.
- Working closely with client IT teams, he/she will provide a sustainable solution to problems experienced.
- He/she will liaise with team members to understand their needs and translate these into tangible and workable solutions, offering the best of breed technology and practical solutions
- He/she will be managing the bugs reported, follow-up with the project office for the scheduled fixing of these and closing the issues down with feedback to the client.
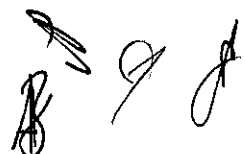
Project Manager

The project manager ensures that any project conforms to the System Development and project methodologies. As software requirements are very susceptible to change, and it is extremely difficult to illuminate all the potential requirements in a single project phase before the software development commences, the project manager, as part of this process, is to be able to communicate the progress and/or challenges to all role players on a timeous basis, identify deadlines in danger, rework priorities with the client, and ensure that the team stays focused.

His/her skills will include:

- Defining project scope, goals and deliverables that support the client goals in collaboration with IMQS and other stakeholders.
- Supporting the development team by creating project plans, sprints, burn-down charts and associated communication documents and presentations.
- Holding regular status meetings with the client and proposing changes and highlighting risks.
- Effectively communicating project expectations to team members and stakeholders in a timely and clear fashion.
- Keeping minutes of meetings, indicating responsibilities, decisions and outcomes and the timeous follow-up of these tasks.
- Identifying and managing project dependencies and critical paths.
- Planning and scheduling project timelines and milestones using appropriate tools.
- Tracking project milestones and deliverables.
- Proactively managing changes in project scope, identifying potential crises, and devising contingency plans.
- Facilitating team and client meetings effectively.
- Conducting project post-mortems and creating a recommendations report in order to identify successful and unsuccessful project elements.

Professional Support and Data Quality Assurance Services

The professional support team is comprised of members with the suitable knowledge, skills and experience to assist the Licensee with the technical know-how of periodic and regular updating of the different Modules, not covered by the other job descriptions, and includes knowledge on performing data quality assurance services. These services extend over various fields of expertise and are defined in detail in "Annexure A". The skills of these individuals will depend on the specifications of the services required.

Senior Asset Manager Specialist

The Senior Asset Manager (AM) Specialist acts as the responsible director who leads the initiative and advises the client.

Chartered Accountant

The Chartered Accountant (CA) leads the asset accounting approach, including the oversight of data preparation and quality assurance (QA). Typically, Chartered Accountants work in all fields of business and finance, including audit, taxation, financial and general management.

Professional Engineer (Asset Management)

The Professional Engineer (Asset Management) plans and overseas infrastructure asset verification data improvements, data analysis and interpretation, including annual reviews. Typical objectives are as follows:
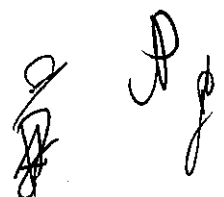
- To implement and maintain Asset Management strategies policies, processes and procedures
- To assist in ensuring asset management principles and processes are implemented
- To assist in setting standards of service/service levels
- To input into and prepare master works program, focusing on maintenance and replacement of assets
- To prepare budgets associated with asset management, ensuring full lifecycle costs are considered
- To implement and maintain an Integrated Management System (IMS) or equivalent, which brings together best practices for acquisition and maintenance of assets
- To provide support to other key personnel

Engineering Technician

The Engineering Technician performs asset and data verification and componentises the assets according to GRAP.

Database Manager

The Database Manager (DBA) creates and manages all asset databases, performs regular data integrity checks, including the appropriate updating of the databases and quality assurance (QA).

They are typically IT Professionals responsible for the installation, configuration, upgrading, administration, monitoring, maintenance, and security of databases in an organization. The role includes the development and design of database strategies, system monitoring and improving database performance and capacity, and planning for future expansion requirements. They may also plan, co-ordinate and implement security measures to safeguard the database.
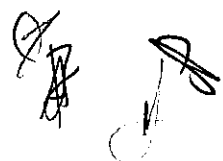
GIS Technician

The GIS Technician performs all spatial analysis including the integration and updating of information onto the system. The GIS Technician will support the ongoing maintenance and dissemination of data and applications in the GIS environment. Reporting to the

Director - Information Technology, the GIS Technician will work with various departments to ensure that their needs for GIS information are met on a day to day basis.

Technical responsibilities typically include the following:
- Responsible for the on-going spatial data maintenance and dissemination, end-user support and the generation of maps and other GIS reports and information product;
- Provide technical expertise related specifically to asset management;
- Responsible for the creation of as-built municipal drawings using AutoCAD;
- Responsible for the compiling and organizing GIS data from maps, databases and other sources;
- Responsible for the collection of data in the field using Global Positioning System (G.P.S.) units;
- Responsible for the collection and conversion of mapping resources and data;
- Responsible for the daily input and editing of municipal infrastructure;
- Conduct programmatic and manual analysis and create reports and thematic maps on the data within the GIS;
- Ensure that quality assurance on new or revised data conforms to standards laid out in the GeoDatabase, or any other applicable standard or policy;
- Responsible for the conversion, import and export data in and out of the GIS system;
- Direct the preparation of regular status reports, highlighting GIS issues requiring attention;
- Create and document procedures and metadata definitions

ADDENDUM TO SERVICE DELIVERY AGREEMENT

ENTERED INTO BY AND BETWEEN

CAPE AGULHAS MUNICIPALITY

(HEREAFTER REFERRED TO AS "THE CUSTOMER")

AND

IMQS SOFTWARE (PTY) LTD

REGISTRATION NUMBER: Reg. No 2000/01958107

(HEREAFTER REFERRED TO AS "THE OPERATOR")

COLLECTIVELY REFERRED TO AS "THE PARTIES"

FURTHER TO THE RECEIVER AGREEMENT CONCLUDED BETWEEN THE ABOVEMENTIONED PARTIES ON ___19 OCTOBER 2021_____ IT IS HEREBY AGREED AS FOLLOWS:

1   INTERPRETATION

1.1   Words and phrases in abbreviations, definitions or other of the Main Service Level Agreement shall bear the same meaning in this Addendum, as amended hereby.

1.2   This Addendum shall take effect upon signature by all parties hereto.

1.3   Should this Addendum and the Service Level Agreement contain conflicting terms, then the terms contained in this Addendum shall prevail.

2   DEFINITIONS

2.1   In this Addendum, unless a contrary intention clearly appears, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.1.1   **"this Addendum"** means this written document together with all written appendices, annexures, exhibits or amendments attached to it from time-to-time;

2.1.2   **"Personal Information"** shall have the meaning ascribed to it in Chapter 1 of the Protection of Personal Information Act, No. 4 of 2013 (as promulgated in the Republic of South Africa);

2.1.3   **"Processing"** or **"Process"** shall have the meaning ascribed to it in Chapter 1 of the

Protection of Personal Information Act, No. 4 of 2013 (as promulgated in the Republic of South Africa);

2.1.4 **"Data Protection Legislation"** shall mean legislation enacted to protect personal, commercial and governmental data from unauthorised access, alteration, destruction or use;

2.1.5 **"Addendum Date"** means the date on which this Addendum is signed by the last party to do so.

3 AMENDMENTS

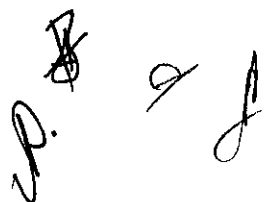3.1 The Agreement is hereby amended to include the following clause:

DATA PROTECTION

3.2 The Operator undertakes to comply, and will cause its personnel to comply, with Data Protection Legislation in connection with any Processing of Personal Information that may come into its possession pursuant to the provisions of the Agreement, including but not limited to the conclusion and execution of this Addendum.
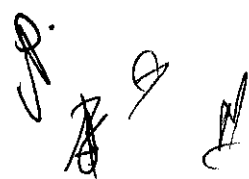
3.3 The Operator will:

3.3.1 not transfer Personal Information Processed by it to a country outside South Africa without the prior written consent of the Customer.

3.3.2 not use or maintain any Personal Information on a laptop or other portable device (including memory sticks, USB flash drives, or other storage medium devices) and within 5 (five) days from the date the Personal Information has been collected and loaded by The Operator onto

its digital device, delete and / or destroy such Personal Information, save where it is required to keep such information for the purposes of applicable law;

3.3.3   implement, having due regard to generally accepted information security practices, commercially reasonable precautions and measures (both organisational and technical) to reserve the integrity and prevent and detect the corruption and unauthorised access of Personal Information through its information technology systems.

3.4   notify the Customer promptly from the date of obtaining actual knowledge of any breach of any provision of this clause and assist and co-operate with the Customer concerning any disclosures to affected parties and other remedial measures as required under applicable law.

3.5   in relation to any Personal Information which may be made available by the Customer from time to time for the purposes of this Agreement, whether by way of written agreement or otherwise:

3.5.1   treat such Personal Information as Confidential Information and not disclose it unless required to do so by law.

3.5.2   upon the termination or cancellation of the Service Level Agreement for any reason whatsoever and unless otherwise agreed by the Parties in writing, The Operator will return any and all Personal Information held by it as a result of this Agreement and will delete such Personal Information from any equipment, information technology, system, device, product, publication, document, website or any other material where the Personal Information is used, contained, installed, entered, programmed, copied, printed, displayed or published.

3.6   The Customer warrants that it has the necessary consents and/or authorisations to process and otherwise deal with Personal Information of its Customers as contemplated in this

Agreement, to provide The Operator with such Personal Information and to authorise The Operator to Process such Personal Information and otherwise deal therewith as contemplated in this Agreement.

4   SIGNATURE IN COUNTERPARTS

This Addendum may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

SIGNED by **The Operator** at .....Stellenbosch.....on this ..21st.... day ....October....
2021.

AS WITNESSES:

1. .... Name: ..Fiona Johnson..............

2. .... Name: ..NANDINE ROOYSEN......

                                              Taljaard.

                                  For and on behalf of **the Operator**
                                  Being duly authorised hereto

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SIGNED by **the Receiver** at .....Bredasdorp.....on this ...19.... day ....October.........2021

AS WITNESSES:

1. .... Name: ....

2. .... Name: ....

                                  For and on behalf of the **Cape Agulhas Municipality**
                                  being duly authorised hereto