



TENDER NO. SCM12/2016/17

SERVICE LEVEL AGREEMENT

Entered into by and between

QINISEKA SECURITY CC

(a Close Corporation duly incorporated in terms of the laws of South Africa, having its main place of business at Reburnie Building, 28 Church Street, Vredendal, 8160 with registration number, 1997/058241/23 represented herein by Mr. R.L. Benecke in his capacity as Member, duly authorized thereto)

(Hereinafter referred to as "the Service Provider")

And

CAPE AGULHAS MUNICIPALITY

(Herein represented by D.G.I. O'Neill in his/her capacity as Municipal Manager)

(Hereinafter referred to as "the Purchaser")

[Handwritten initials/signature]

0000072

PREAMBLE:

- A. The Purchaser has awarded a Bid, with reference number SCM12/2016/17, for the provision of cash in transit services for the Purchaser which includes inter alia the following:
- The collection, conveyance, storage and depositing of cash
- B. The Service provider has accepted such appointment and shall render the services to the Purchaser on the terms and conditions as set out in this agreement.

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this agreement unless the context indicates a contrary intention a word or expression which denotes: -

- 1.1.1 any gender shall include the other genders;
- 1.1.2 a natural person shall include juristic persons and vice versa; and
- 1.1.3 the singular shall include the plural and vice versa.

1.2 The terms and conditions contained in the General Conditions of Contract (GCC), incorporated herein, and annexed hereto as "A", form part of the agreement between the Parties.

1.3 In the event of any inconsistency between the provisions of this Service Level Agreement and the terms and conditions contained in the GCC, the provisions of this Service Level Agreement shall prevail over the terms and conditions contained in the GCC.

1.4 In this agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

1.4.1 "Agreement" shall mean this Service Level Agreement, together with the bid documents, the GCC, and any other annexure hereto, and "this Agreement" shall have a corresponding meaning;

1.4.2 "GCC" mean the General Conditions of Contract, as set out in Annexure "A", attached hereto and incorporated herein;

1.4.3 "Parties" means the Purchaser and the Service provider.

1.5 Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in that clause.

2. DURATION

This Agreement will come into effect on ~~1 January 2017~~ and shall terminate on ~~31 December 2019~~ unless otherwise terminated in accordance with the provisions of this Agreement.

1 FEBRUARY 2017

31 JANUARY 2020

3. THE SERVICES

3.1 The Service provider shall render the services to the Purchaser on the terms and conditions set out in this Agreement (hereinafter referred to as "the Services") and in accordance with the specifications contained in the bid documents annexed hereto in Annexure A:

- a) The service provider must transport and deposit money into the Cape Agulhas Municipality bank account on the specified days and in accordance with the pricing schedule.
- b) Collection, conveyance, storage and delivery of cash shall be made using sealed containers as supplied by the service provider.
- c) Collection, conveyance, storage and delivery of bank deposit books shall be made using sealed envelopes/bags as supplied by the service provider.
- d) The service provider shall return the Bank Deposit Books on the next removal.
- e) Before handing over the cash to an employee of the service provider, Cape Agulhas Municipality shall verify the identity of such employee by reference to the employee's personal official identity card.
- f) The service provider shall provide details of the nature and format of official identity cards in use.
- g) The service provider shall provide an official receipt for each container and/or envelope received by them.
- h) The service provider shall remove the cash between 09:00 and 14:00 daily from the offices as specified in the Offer.
- i) The cash shall be deposited within 24 hours after collection within the bank account of the municipality.
- j) Any discrepancies must be reported within 24 hours to the Manager, Income or other designated representative.
- k) Supply of money bags and seals.

3.1 Notwithstanding any provision to the contrary in the GCC, the primary responsibility for supplying the Services vests with the Service provider and the Service provider may not

subcontract or transfer any obligation in terms of this Agreement without the prior written authorization of the Purchaser.

4. REPORTING AND LEVELS OF SERVICE TO BE RENDERED BY THE SERVICE PROVIDER

4.1 The Service provider must report to the Director: Financial Service on the progress made in executing its obligations in terms of this agreement.

5. THE PURCHASER'S RESPONSIBILITIES

5.1 The Purchaser will be responsible for the following administrative arrangements in respect of the Services:

5.1.1 Provide the Supplier with a list of all offices that are to be served as well as the particulars of the relevant contact person at each of the Purchaser's offices.

5.1.2 Provide the Supplier with the name and contact details of the Purchaser's Project Manager.

5.1.3 Verify the identity of employees of the Supplier by reference to the employee's personal official identity card before handing over money to such employee;

6. PROJECT TEAM

6.1 The Project Team will meet when the need arises.

6.2 All matters relating to the execution of this Agreement, particularly the progress made by participants, shall be discussed at meetings.

6.3 The Parties expressly record and agree that the Project Team shall not have the power to effect any amendments to this Agreement, and shall be obliged to perform its duties / functions within the parameters of the parties' rights and obligations in terms of this Agreement.

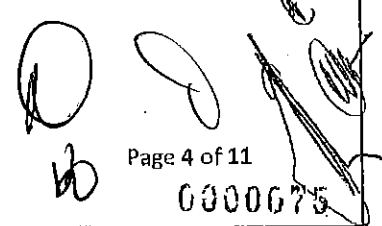
7. COPYRIGHT / INTELLECTUAL PROPERTY RIGHTS

7.1 The ownership of and all rights in and to intellectual property owned by either Party prior to the commencement of this Agreement shall be and remain vested with the Party who as at the commencement of this Agreement is the owner thereof.

7.2 Any information, memoranda or documentation that was developed or generated through the activities of this Agreement shall be the intellectual property of the Purchaser.

7.3 The Service provider shall not use or allow any other entity to use any of the documentation and materials referred to in clause 7.2 without the prior written consent from the Purchaser.

7.4 Should the Service provider wish to reproduce any documentation and materials referred to in clause 7.2, it shall obtain prior written approval from the Purchaser, which approval shall not be unreasonably withheld.

Handwritten initials and signatures in the bottom right corner of the page.

7.5 The Service provider hereby warrants that the Service provider either owns or obtained the right to use all intellectual property in all material used by the Service provider in the course of providing the Services to the Purchaser in terms of this Agreement.

7.6 Subject to clause 7.5, the Service provider indemnifies the Purchaser from and against any claim that any material used by the Service provider, in the course of providing the Services to the Purchaser in terms of this Agreement, infringes any third Party's intellectual property rights.

8. PAYMENT

8.1 The Purchaser will pay the Service provider an amount of R19 152.00, VAT exclusive per month for the first contract year for the rendering of the Services in terms of this Agreement. The purchaser will only allow an increase equal to the CPI which will come into effect at the beginning of a new contract year provided that the Service provider has given the Purchaser prior notice of at least fourteen (14) days written notice of such increase.

8.2 The Purchaser shall pay the Service provider within ~~15 (fifteen)~~ ^{30 (THIRTY)} days of receipt of a detailed invoice and the certificates signed by a duly authorized official confirming that all the required services were delivered and are in accordance with the specifications contained in SPECIFICATIONS in tender documents.

8.3 The Purchaser will verify the correctness of a tax invoice, and notify the Service provider of any possible discrepancies within 10 (ten) days of receipt of the tax invoice. Provided that the tax invoice is correct the amount due shall be payable within ~~15 (fifteen)~~ ^{30 (THIRTY)} days from receipt of the tax invoice.

8.4 If the Purchaser identifies any material discrepancies, the tax invoice will be referred back to the Service provider, and the amount due will be payable within 30 (thirty) days from receipt of a corrected tax invoice, provided that the provisions of clauses 8.2 and 8.3 have been complied with.

8.5 Payments by the Purchaser to the Service provider shall be made by electronic funds transfer into a bank account in South Africa, as nominated in writing by the Service provider.

9. INDEPENDENT CONTRACTOR

9.1 The Service provider is appointed as an independent contractor, and not as an employee, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the parties.

9.2 The Purchaser shall not be liable for any injury, loss or damage directly or indirectly incurred by the Service provider, as an independent contractor, arising out of or in connection with the Services rendered by the Service provider in accordance with this Agreement.

10. ENTIRE AGREEMENT

10.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.

- 10.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.
- 10.3 This Agreement replaces any other previous verbal or written agreement entered into between the Parties,

11. WAIVER

- 11.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.
- 11.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.
- 11.3 No indulgence, leniency or extension of time which any Party ("*the Grantor*") may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

12. SETTLEMENT OF DISPUTES

- 12.1 Without detracting from a Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 12.2 and 12.3.
- 12.2 Mediation
- 12.2.1 Subject to the provisions of clause 12.1, any dispute arising out of or in connection with this Agreement may be referred by the Parties without legal representation to a Mediator.
- 12.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.
- 12.2.3 The Mediator shall be selected by agreement between the Parties.
- 12.2.4 If an agreement cannot be reached upon a particular Mediator within three business days after the Parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall be requested to nominate the Mediator within seven business days after the Parties have failed to agree.
- 12.2.5 The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties any may be guided by their common reasonable desire of the form in which the said representations are to be made.

12.2.6 The Parties shall have seven business days within which to finalise their representations. The Mediator shall within seven business days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.

12.2.7 The opinion so expressed by the Mediator shall be final and binding upon the Parties unless a Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved Party may institute legal proceedings in a court of competent jurisdiction, unless the parties agree to refer the dispute to arbitration in accordance with clause 12.3. The expressed opinion of the mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.

12.2.8 The cost of mediation shall be determined by the Mediator.

12.2.9 Liability for such cost shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

12.3 Arbitration

12.3.1 Subject to the provisions of clause 12.1, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

12.3.2 Arbitration shall be held in Cape Town informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within ten business days.

12.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is:

- (a) primarily a legal matter, a practising Senior Advocate of the Cape Bar;
- (b) any other matter, an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.

12.3.4 If agreement cannot be reached on whether the question in dispute falls under 12.3.3(a) or 12.3.3(b) and/or upon a particular Arbitrator within three business days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall be requested to:

- (a) determine whether the question in dispute falls under 12.3.3(a) or 12.3.3(b); and or
- (b) nominate the Arbitrator within seven days after the Parties have failed to agree.

12.3.5 The Arbitrator shall give his or her decision within five business days after the completion of the arbitration. The Arbitrator may determine that the costs

of the arbitration are to be paid either by one or the other or by both of the Parties.

12.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, upon the application by any Party to the arbitration.

12.4 Notwithstanding the provisions contained in clause 27 of the GCC, disputes between the Parties shall be governed exclusively by, and settled in terms of, clause 12.1 to 12.3 of this Service Level Agreement.

13. CONFIDENTIAL INFORMATION

13.1 The Service provider shall not, during the currency of this Agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Purchaser, government in any other sphere, or any government institution or organ of state.

13.2 The Purchaser shall hold in confidence all Confidential information received from the Service provider and not divulge the Confidential Information to any person, including any of its employees, save for the employees directly involved with the execution of this Agreement.

13.3 For purposes of this clause "Confidential Information" shall mean –

13.3.1 Any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights, all trade secrets, all agreements, the content of all possible future agreements which may be entered into with any other Party, all knowledge obtained by way of research and development, irrespective of whether aforementioned information that is revealed is applicable to technical, operational or financial aspects of the other Party;

13.3.2 Any information of whatever nature, which has been or may be obtained by the other Party, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;

13.3.3 Analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;

13.3.4 All information which a third party has in terms of any agreement made available to either Party and which has become known to the other party in the course of rendering the Services; and

13.3.5 Any dispute between the Parties resulting from this Agreement

13.4 The Parties shall –

- 13.4.1 use the Confidential Information only for the purpose of giving effect to the terms and conditions of this Agreement;
- 13.4.2 treat and safeguard the Confidential Information as private and confidential; and
- 13.4.3 ensure proper and secure storage of all Confidential Information.
- 13.5 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are provided to the Service provider or which come into the Service provider's possession during the currency of this Agreement, are deemed to be the property of the Purchaser and shall be surrendered to the Purchaser on demand, and in the event of the expiry or termination of this Agreement, the Service provider will not retain any copies thereof or extracts there from without obtaining the prior written permission of the Purchaser.
- 13.6 The Service provider –
- 13.6.1 acknowledges that he/she has carefully considered the provisions of the clause;
- 13.6.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Purchaser and the Government of the Republic of South Africa and that if he/she should at any time dispute the reasonableness of this clause, then the onus of providing such unreasonableness shall be on the Service provider; and
- 13.6.3 acknowledges that he/she has entered into this Agreement freely and voluntarily and that no circumstances exist and/or existed for him/her alleging, either now or at any future time, that he was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the Purchaser in agreeing thereto.

14. BREACH

Should a Party breach any or all of the terms and conditions of this Agreement and remain in such breach 14 (fourteen) days after receipt of a written notice calling upon it to remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement or to remedy the breach itself, and to impose penalties or claim damages in lieu of penalties, as contemplated by clause 15.

15. DAMAGES IN LIEU OF PENALTIES

- 15.1 It is recorded and agreed that, in the event that the Service provider fails to deliver goods or render Services within the period stipulated in this Agreement, the Purchaser shall be entitled to impose penalties on the Service provider in the manner as set out in clause 22 of the GCC.
- 15.2 The Purchaser's right to impose penalties shall not in any way detract from the Purchaser's right to claim damages in lieu of penalties in the event of a breach by the Service provider of any or all of the terms and conditions of this Agreement.

16. NOTICE AND DOMICILIUM

- 16.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

THE PURCHASER:

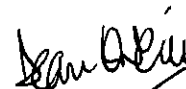
D.G.I. O'Neill
Cape Agulhas Municipality
1 Dirkie Uys Street
Bredasdorp
7280

THE SERVICE PROVIDER:

Qiniseka Security CC
Rebunie Building
28 Church Street
Vredendal
8160

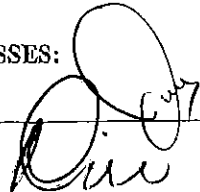
- 16.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 16.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) business days after the date of posting.
- 16.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party, shall be adequate written notice of communication to such Party.

SIGNED AT Bredasdorp ON THIS 2 DAY OF February 2016



THE PURCHASER

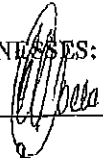
AS WITNESSES:

1. 
2. Qui

SIGNED AT Meriden, ON THIS 01 DAY OF February 2017
~~2017~~


THE SERVICE PROVIDER

AS WITNESSES:

1. 
2. Engelbrecht

10

Dawid van Wyk

From: Dawid van Wyk
Sent: 03 February 2017 10:28 AM
To: 'Renier van Coller'
Subject: RE: SLA
Attachments: Message from "RNP00267393D89A"

Renier

Hier is die getekende SLA.

Lekker naweek

Dawid van Wyk
BESTUURDER INKOMSTE/MANAGER INCOME

Kaap Agulhas Munisipaliteit/Cape Agulhas Municipality
Postbus 51/P O Box 51
Bredasdorp
7280

Tel. 028-425 5500
dawidv@capeagulhas.gov.za

From: Renier van Coller [mailto:renier@qiniseka.co.za]
Sent: 02 February 2017 03:37 PM
To: Dawid van Wyk
Subject: FW:

Dawid

Sorry my fout



Kind Regards
Renier van Coller
Qiniseka Security - Cash in Transit & Guarding Services
T: 027 213 2051 F: 027 213 5449
C: 082 887 1049 E: renier@qiniseka.co.za
PO Box 2102, Vredendal, 8160

From: valerie@qiniseka.co.za [mailto:valerie@qiniseka.co.za]
Sent: Thursday, 02 February 2017 2:52 PM
To: renier@qiniseka.co.za
Subject: