

**CONTRACT FOR THE PROVISION OF SHORT-TERM INSURANCE PORTFOLIO FOR
NQUTHU LOCAL MUNICIPALITY**

Made and entered into by and between:

NQUTHU LOCAL MUNICIPALITY

(Hereinafter referred to as "NLM")

Herein represented by **Mr. MB Jiyane** in his capacity as the **Accounting Officer**

- and -

KUNENE MAKOPO RISK SOLUTIONS (PTY) LTD

(Company registration number 2017/208714/07)

(Hereinafter referred to as "KMRS")

Herein represented by **Mr. Madumetsa Makopo** in his capacity as the member duly authorized hereto.

(Each a "Party" and jointly "Parties")

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1. INTRODUCTION

It is recorded that:

- 1.1 NLM requires professional services for the provision of short-term insurance portfolio for the **BID NO : NQULM02/2022 -2023 PROVISION OF SHORT-TERM INSURANCE TO NGUTHU LM FOR A PERIOD OF 36 MONTHS.**
- 1.2 KMRS possesses the requisite skills and expertise to render the required professional services in terms of clause 1.1;
- 1.3 NLM in terms of its Supply Chain Management procedures awarded and/ or appointed KMRS as a successful bidder relating to Bid Notice No: NQULM02 /2022 -2023 NLM in terms of the confirmation dated **09th December 2022**. The confirmation letter is Marked Annexure "A"
- 1.4 KMRS has accepted the confirmation in terms of their acceptance letter dated 09th December 2022, marked Annexure "B".

WHEREFORE

- 1.5 The Parties record their terms and conditions of agreement set out in this Contract.

2. INTERPRETATION

- 2.1 The headings of the clauses in this Contract are for the purpose of convenience and reference only and shall not be used in the interpretation of or modify the terms of this Contract nor any clause thereof, unless a contrary intention clearly appears.
- 2.2 Words importing –
 - 2.2.1 the singular includes a reference to the plural and vice versa;
 - 2.2.2 any one gender includes a reference to the other genders,
 - 2.2.3 a natural person includes a reference to a juristic person and vice versa.

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2.3 Where any term is defined within the context of any particular clause in this Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Contract, notwithstanding that that term has not been defined in this interpretation clause.

2.4 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.4.1 "**Breach**" means failure to perform on any obligation set out in this Contract;

2.4.2 "**Broker Commission**" means payment of the prescribed fees payable by the client/s as per the agency agreement concluded between the Service Provider and the underwriters.

2.4.3 "**Business Day**" means a day, other than a Saturday, Sunday or public holiday in South Africa;

2.4.4 "**Casus fortuitous**" means an accidental occurrence that prevents the execution of the obligations of the Parties due to no fault of the Parties. Any such act, event or circumstance or any combination of acts, events or circumstances which:

(a) is beyond the reasonable control of the Party affected by such event or circumstance; or

(b) involve acts of public commotion, riots, service delivery protest, war, acts of terrorism, strikes that are widespread occurring in South Africa or political in nature; strike action by employees of either Party lockouts and other industrial disturbances;

2.4.5 "**Confidential**" means any information or data of any nature,

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tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Parties or which is provided or disclosed in confidence, and which the Parties may disclose or provide to a third party or which may come to the knowledge of a third party or by whatsoever means. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

2.4.6 "Contract"

means the creation of a legally binding and enforceable agreement setting out the terms and conditions upon which the Parties have reached consensus about the provision of short-term insurance portfolio for NQUTHU LOCAL MUNICIPALITY. This agreement, read with the tender conditions (signed Tender Document) shall specifically include annexures, and all other documents expressly incorporated into this Contract, in their prevailing form from time to time;

2.4.7 "Contract Manager"

means the respective senior official between the Parties who shall be responsible to the oversight and monitoring of this Contract. More specifically the Contract Manager shall receive reports from Designated Representatives about the performance of the Parties;

2.4.8 "Contract Price"

means the total amount of fees that will be charged by the Service Provider, including disbursements and VAT, for the performance of Services in terms of this Agreement;

2.4.9 "Day"

means a consecutive period of 24 (twenty-four) hours commencing at 00:01 and ending at 24:00;

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- 2.4.10 "Designated Representatives" means officials duly delegated and/ or assigned to the implementation / enforcement of this Contract on behalf of the Parties. Either Party may replace such designated representative (as applicable) from time to time on reasonable prior written notice to the other Party;
- 2.4.11 "Effective Date" means , notwithstanding the signature date of the last Party signing this Contract;
- 2.4.12 "Insurer" means any such insurance company that may be engaged in terms of this Agreement;
- 2.4.13 "Key Result" means an indicator or yardstick in terms of the Service Provider's successful performance of its obligations in terms of this Agreement may be measured
- 2.4.14 "Methodology" means the professional expertise and the system of methods required by the Service Provider to perform the obligations set out in this Agreement;
- 2.4.15 "Parties" means NQUTHU LOCAL MUNICIPALITY and KUNENE MAKOPO RISK SOLUTION;
- 2.4.16 "Placement of Cover Fees" means the fees payable to the Service Provider as agreed between the former and NQUTHU LOCAL MUNICIPALITY
- 2.4.17 "Policy" means the insurance cover as underwritten by the insurer.
- 2.4.18 "Project" means the services to be performed by the Service Provider in terms of the requirements and the corresponding obligations to be fulfilled by the client;
- 2.4.19 "Project Plan" means the services to be performed by the Service Provider in the Application Document;

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2.4.20 "Risk Management Services" means the assessment and implementation of risk control services, as required from time to time;

2.4.21 "Services" means the professional work to be performed by the Service Provider in terms of the Short-Term Insurance intermediary Organization, being placement of cover and claims administration together with performing marketing services.

2.4.22 "Service Provider" means Kunene Makopo Risk Solution (Pty) Ltd, a company duly registered in terms of the Company Laws of South Africa with registration number: **2017/208714/07**;

2.5 Any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of any such statutory provision or enactment (whether before or after the date of this Contract). No term in this Contract shall substitute any rule of law, more specifically in relation to statute.

2.6 When any number of days is prescribed in this Contract, it shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2.7 The rule of construction that provisions are to be construed against the Party who drafted the Contract shall not apply to this Contract.

3 BUSINESS RELATIONSHIP BETWEEN THE PARTIES

3.1 The parties acknowledge that the contractual relationship between the parties is hereby entered into as an Outsourcing party and Service Provider in compliance with the relevant legislation, regulations pertaining thereto and NLM's Supply Chain Policy.

3.2 NLM undertakes not to circumvent the Service Provider and directly interact with the insurance underwriter.

3.3 The terms agreed to herein, are the only terms comprising part of the Services and shall be the only terms by which the Service provider is bound to perform, and they supersede any previous terms and conditions between the Parties.

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- 3.4 Any other specific requests by NLM shall be agreed to by both Parties and committed to in writing.
- 3.5 To advise NLM accordingly on all Risk exposure on the vehicle fleet in writing within ninety (90) days of Appointment and/or Renewal Period.
- 3.6 All other terms, conditions, alterations or amendments to these terms, in order to be valid, must be in writing, signed by both Parties; and will be added to this Agreement as an Addendum.

4 APPOINTMENT AND DURATION

- 4.1 Notwithstanding the date of signature of this Contract, this Contract shall commence on the effective date 07 December 2022 and shall remain in force until it terminates on 06 December 2025 in accordance with Clause 18 below, unless agreed to otherwise by the parties, subject to annual assessment(s) based on performance as provided.

5. TIME IS OF THE ESSENCE

- 5.1 Time is of the essence in the execution of the obligations by the Service Provider under this Contract. In particular, the Service Provider shall at all material times ensure complete compliance of the implementation of works sanctioned by this contract, so as to adhere to the duration of this Contract, more specifically clause 7.1.

- 5.2 Failure by the Service Provider to deliver on its obligations on the project shall –

5.2.1 constitute a material breach of this Contract on the part of the Service Provider;

5.2.2 entitle NLM to exercise such other remedies available to it in terms of this Contract.

- 5.3 Nothing in this clause shall be construed to the detriment of the Service Provider where performance is affected by occurrence of clauses 20, 21 and acts of breach of contract by NLM.

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6. CONFIRMATION OF COVER QUOTATIONS

- 6.1 The Service Provider further undertakes to, as soon as possible after the signature of this Agreement, provide NLM with a copy of the insurance policy, as evidence of the insurance cover being in place.
- 6.2 The cover is only in force once the Insurer has accepted the risk and confirmed to the Service Provider that they are on the cover.
- 6.3 Insurer may hold the NLM covered, at terms to be agreed, after the inception or renewal of cover due to the late conclusion of renewal terms. Such hold covered arrangement will cease once the renewal terms have been agreed with Insurers and the Service Provider has received confirmation that the Insurers are on risk.
- 6.4 If any mid-term changes are required to be made to the insurance cover during the insurance period, the NLM should contact the Service Provider within a reasonable time period in order to enable this.
- 6.5 In cases where the Service Provider is required to provide estimated terms without approaching the market, the final premium and/or cover cannot be confirmed until the Service Provider has reached an agreement for the costing with insurers and placed the cover.

7. OBLIGATIONS OF THE PARTIES

Obligations of the Service Provider

- 7.1 The Service Provider herein undertakes to and shall within the duration of this Contract render services in terms of the terms and conditions as contained in the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and Annexure "1" (Detailed pricing) of the Bid documents, herein incorporated.
- 7.2 The Service Provider shall at times provide a high standard of professional service and in doing so shall:
- 7.2.1 Render Services honestly, fairly, with due skill, care and diligence; and
- 7.2.2 Pay due regard to the interests of the NLM.

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- 7.3 In particular, the Service Provider shall render the following Services to the NLM;
- 7.3.1 Performing the services as intermediary under the Short-term Insurance Act 1998 (as amended from time to time), entering into, varying or renewing short-term Policies and maintaining, servicing and dealing with the Policies as intermediary on the Client's behalf, collecting or accounting for premiums paid by NLM and receiving, submitting or processing claims under the policies on the Client's behalf subject to the receipt of accurate and reliable information from NLM;
 - 7.3.2 The Service Provider shall not be held liable in respect of the prescription or non-payment in respect of any claim as a result of the delay/omission by NLM to lodge such claim;
 - 7.3.3 Performing other insurance, reinsurance and risk management services as a broker or advisor as discussed and agreed with NLM from time to time; and
 - 7.3.4 Handling all aspects of NLM's insurance requirements which will be agreed and reviewed from time to time.
 - 7.3.5 Arrange the required insurance cover in accordance NLM's instructions;
 - 7.3.6 Explains to NLM the scope and intention of the cover sought and the relative costs of insurance;
 - 7.3.7 Explains the key features of the insurance proposed, including the scope of cover, sums insured and indemnity limits, any significant or unusual restrictions, exclusions conditions or obligations and the period of the cover;
 - 7.3.8 Discloses to NLM the details of the participating Insurer, which may vary from time to time;
 - 7.3.9 Reasonably meets NLM's insurance requirements, and in circumstances where this is not possible, inform NLM of the differences between the insurance requirements required by NLM's and the insurance cover that the Service Provider is able to secure;
 - 7.3.10 Mandated Intermediary: NLM further appoints the Service Provider as a Mandated Intermediary in order to place cover on its behalf without having to

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seek permission from NLM for the duration of this contract and/or Renewal period and/or Option period;

7.3.11 Advice in writing of any Risk exposure to NLM and the extent of any Risk control that needs to be undertaken.

7.4 The parties may order additional services under this agreement, by signing additional schedule(s). All additional services shall be governed firstly by the terms and conditions of this agreement and then by the provisions of such additional schedule(s). The additional service(s) shall come into effect on the dates agreed by the parties.

Obligations of the NLM

7.5 The NLM undertakes to –

7.5.1 Through its Designated Representative and Contract Manager, respectively, enforce and monitor developments of all the stages of the performance of the Service Provider for compliance to this contract;

7.6 Subject to clause 7.1 and performance in terms of this contract; payment shall be made by NLM to the Service Provider within thirty (30) days of receipt of an invoice; provided no written objection is recorded by NLM. In which case NLM shall affect payment in terms of its normal payment procedures;

7.7 NLM shall pay to the Service Provider a Gross Annual Premium of **R1 521 138.72(INCL VAT) for year one only**, subject to underwriting and risk terms provided to and approved by NLM;

7.8 The Service Provider shall be entitled to charge additional charges for services not covered by this agreement, for any work carried out at NLM's written request, where the work is to be done outside of the Service Provider's normal working hours, and for commercial travel and per diem expenses not included under this agreement. Such charges shall be agreed in writing by the parties prior to any work being done;

7.9 The additional charges mentioned in Clause 7.3 above shall be exclusive of VAT;

7.10 Other additional charges shall include, but not be limited to:

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7.10.1 All reasonable and necessary disbursements incurred during the course of the Service Provider rendering the agreed upon and other services to NLM; and

7.10.2 All further charges as may be agreed to between the Parties.

7.11 Payment due and payable to Service Provider shall be effected in its account as provided to NLM;

7.12 Payment shall be made no later than thirty (30) days upon receipt of the invoice, provided that no objection is raised by NLM within 5 business days of receipt of the invoice. An objection shall be in respect of specific performance by the Service Provider in terms of this contract.

8 PROCESSING OF CLAIMS

8.1 The Service Provider shall upon specific performance in terms of this contract prepare such original invoice to be submitted to and verified by the NLM's Designated Representative for processing of due and payable payment.

9 PREMIUM AND RISK MANAGEMENT SERVICES

9.1 The Service Provider will:

9.1.1 Provide details of premium costs of each of the policies offered;

9.1.2 In accordance with Insurance legislation, be entitled to any interest it is able to earn through management of premium balances held on behalf of Insurers.

9.1.3 The Service Provider's remuneration includes the costs of servicing and handling insurance claims which can reasonably be expected to increase in the normal course of the operations of NLM, based on the past reported claims history.

9.2 The Service Provider shall in addition to the services referred to in Clause 9.1.3 above, be entitled to be remunerated by NLM for any Risk Management Services and functions that may be required from time to time on a time and material basis.

9.3 In the event of a large and/or complex claim occurring, specialist skills may be required, subject to written agreement with NLM. In these circumstances the Service

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Provider will be solely responsible for the appointment of the aforementioned specialists and NLM will, in addition to its payment to the Service Provider, be responsible for any and all costs arising from the appointment of these said specialists.

- 9.4 The Service Provider reserves the right to charge its normal fee for its services for Risk Management as at the date upon which and in the event NLM ceases to be a Client but wishes the Service Provider to continue handling outstanding claims on its behalf after the expiry of the current insurance period and the Service Provider agrees to do so.
- 9.5 In order to fulfil its obligations in terms of this Agreement the Service Provider may secure services of third parties from time to time.
- 9.6 The Service Provider will obtain NLM's and/or the Insurer's prior approval, as may be applicable, to use the services of external professional loss adjusters, professional consultancy services and Claims Procurement services.

10 VARIATIONS AND ESCALATIONS OF PREMIUMS

- 10.1 The parties agree that during the course of the Service Provider providing services to NLM, the following may result in escalation of premiums:
- 10.1.1 Increases in underwriting rates;
- 10.1.2 Claims experience of the Client;
- 10.1.3 Changes in Asset values either through the purchasing of new assets, disposal of current assets or values realised from the Fixed asset register; and
- 10.1.4 Any other variables and or changes reasonably contemplated by the parties that pertain to this section.
- 10.2 Such changes shall take place with immediate effect as and when such changes and variations occur and the Service Provider shall not be obliged to notify NLM of such changes and variations, but shall notify the latter of same as a matter of courtesy.

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11 CLAIMS

- 11.1 The Insurance policy will describe the procedures and conditions associated with the preparation and formulation of a claim. It is essential that the Services Provider is notified in accordance with the underlying policy conditions of any incident, or circumstances, which could give rise to a claim. In the event of late notification to the Service Provider the Insurers may decide to repudiate a claim in terms of that policy or on the basis that that their interests have been prejudiced by the delay. When notifying the Service Provider, NLM must include all material facts concerning the claim.
- 11.2 The Service provider shall:
- 11.2.1 Give NLM guidance on pursuing a claim under the relevant policy or relevant policies;
 - 11.2.2 Confirm within a reasonable time period that the claim has been registered;
 - 11.2.3 Ensure that payment of claims shall be finalized within a reasonable time period from the date of submission of the invoice;
 - 11.2.4 Handle claims and keep NLM informed of progress;
 - 11.2.5 Inform NLM verbally or in writing if the Service Provider is unable to deal with any part of a claim;
 - 11.2.6 The settlement of claims will be dependent upon collection of claim payments from Insurers. Interim payments may be made during the negotiation process with an insurer. However, the Service Provider cannot be held responsible for the delay by Insurers in facilitating or processing payment of any claim or for non-payment in the event of insolvency of an Insurer. The Service Provider is not liable for payment of interest on outstanding or delayed claim payments.
 - 11.2.7 The insurance policy sets out the various terms, conditions, warranties and exclusions relating to the cover. In the event of a claim it is the only

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document which can be used to determine whether or not a claim is payable.

12 CHANGE IN CIRCUMSTANCES

- 12.1 Should the circumstances surrounding the fulfilment of this agreement alter materially from those prevailing at the time of signature of this agreement, then the parties undertake to renegotiate such of the terms and provisions of this agreement as may be necessary to ensure that this agreement remains fair and equitable to each of the parties.

13 RETENTION OF POLICY AND CLAIM DOCUMENTATION

- 13.1 At NLM's election, the Service Provider will retain the original copy of the insurance contract(s) which it arranges on NLM's behalf in accordance with its statutory obligations. The Service Provider will automatically destroy policy records after these retention periods have lapsed, unless the Parties agree otherwise. The Service Provider will provide this service for as long as NLM remains a Client. In the event of NLM terminating the Service Provider's Services, all archived policy documentation will be returned to NLM or a duly authorized agent of NLM's election; and
- 13.2 NLM shall be consulted about any policy amendments prior to such being effected.

14 FINANCIAL SOUNDNESS OF INSURERS

- 14.1 The Service Provider shall take reasonable due care to assess the financial soundness of the proposed Insurers and reinsurers and may from time to time recommend using public information, including that produced and recognized by rating agencies. Notwithstanding this, the Service Provider cannot and does not guarantee the future financial ability of any insurer or reinsurer to meet policyholder claims. The final decision on the suitability of any insurer rests with NLM. NLM and the Services provider shall work closely together to ensure that they meet the insurer and reinsurer's requirements for a policyholder claim. The Service Provider shall keep NLM informed of any material concerns which it may have with regard to the Insurer's financial soundness and possible alternative options.

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15 COMMUNICATION PROTOCOL

- 15.1 All Client's instructions and notices to the Service Provider shall be in writing. In urgent cases oral instructions may be accepted but must first be confirmed in writing within two (2) working days. Acknowledgment of receipt of the instructions should be confirmed by the Service Provider in writing within a reasonable time.
- 15.2 In circumstances where the Service Provider has provided NLM in writing with advice, proposals, recommendations or premium quotations, no cover can be placed and accepted by insurers without NLM's written instructions to arrange cover.
- 15.3 Electronic communications and Facsimiles received after normal business hours shall only be deemed to have been received on resumption of normal business hours the following business day.
- 15.4 All communications engagement, liaison and submission of any written and/ or soft copies relating to it's the performance of the obligations in terms of this contract shall be by and between the Designated Representatives.
- 15.5 Failure of and/or the communication breakdown between the Designated Representatives may be escalated to the next high-level officials of the parties.

16 RECIPROCAL OBLIGATIONS

- 16.1 The Parties undertake, in favour of each other to:
 - 16.1.1 Pay due regard to each other's information needs and communicate information to the other in a way that is factually correct, clear, fair and not misleading;
 - 16.1.2 Avoid conflicts of interest where applicable and ensure that such conflict of interest is disclosed and managed fairly;
 - 16.1.3 Take reasonable care to establish and maintain systems and controls appropriate to the implementation of this Agreement and in accordance with the relevant provisions of NLM's Supply Chain Policy;
 - 16.1.4 Deal with each other's information in a confidential manner.

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17 WARRANTIES

17.1 The Service Provider warrants to the NLM that:

17.1.1 It possesses professional skills regarding the performance management and administration of its obligations;

17.1.2 The tax affairs are in order and that such affairs shall remain in order during the operation of this Contract. In particular the Service Provider, warrants that it shall, at all times, have a valid tax clearance certificate as issued by the appropriate authority. Alternatively, the Service Provider shall inform NLM in writing if such Certificate has expired;

17.1.3 It has proven knowledge and skill to manage the project and construction of roads in general;

17.1.4 It shall fulfil all its third-party contractual obligations and financial management as to render nor breach to its implementation of the project;

17.1.5 It has no court order declaring insolvency nor is there a pending case for insolvency, fraud, any act of dishonesty or conduct prejudicial to the implementation of the project, more specifically blacklisting as a bad service provider with the State;

17.1.6 It has employees, servants or agents with appropriate experience and qualifications in the management and execution of the obligations being rendered in terms of this contract;

17.1.7 If sourcing material or such other equipment or information from a third party, then:

17.1.7.1 that the third party and the Service Provider have in place, on signature of this Contract, confirmation from the third party that such a third party shall supply the Service Provider with all the material or equipment necessary for the performance of this Contract;

17.1.7.2 any arrangement between the Service Provider and any third party shall remain an exclusive relationship between them;



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17.1.7.3 the Service Provider undertakes to have all and any arrangement to comply with the relevant provisions of this Contract.

18 BREACH

18.1 In the event of breach by either Party, then either Party may in its sole discretion elect to either:

18.1.1 condone the non-performance by the other Party if there is a reasonable explanation for such non-performance; or

18.1.2 to terminate the entire contract on Ten (10) business days' notice, in the case of material breach; or

18.1.3 by notice in writing, require the other Party to perform the obligations within thirty (30) days of receipt of the notice.

18.2 Notwithstanding what has been stated above, nothing shall prejudice the right of either Party (the aggrieved Party) to cancel this Contract where any breach occurs (*excluding material breach*), provided it may only do so if it gives the other Party (the defaulting Party) notice of the default complained of, calling upon the defaulting Party to rectify the default within thirty (30) days of receipt of the notice, failing which the aggrieved Party will be entitled to cancel this Contract without prejudice to its rights to claim damages in breach of Contract, if any.

19 TERMINATION

19.1 This Contract shall run from the effective date **07th December 2022** and endure until it automatically terminates on **06th December 2025**, being the last operational date by ~~effluxion of time~~

19.2 The Contract shall also terminate, based on the following:

19.2.1 Either Party exercising the right to cancel the Contract because of breach of the terms and conditions of this contract;

19.2.2 A material breach referred to in this Contract;

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19.2.3 Physical impossibility by either Party to perform provided that the provisions of clauses 20 and 21 shall be observed;

19.2.4 Mutual agreement by the Parties.

19.3 Any termination in terms of this clause shall be in writing by giving the other Party at least fourteen (14) Business Days' notice.

19.3.1 The written notice may be shorter only in instance where the duration of the Contract renders the observation of the period of fourteen (14) Business Days impossible to do so.

20 INDEMNITY

20.1 During the subsistence and termination of this Contract, the Service Provider undertakes to:

20.1.1 keep NLM indemnified against all indirect and consequential and special or direct losses and damages and expenses and costs and claims including, but not limited to, legal fees and expense suffered by NLM or any third party where such loss or damage or expense or cost is the result of any wrongful action or omission or negligence or breach of any contract by the Service Provider or its employees and/or its agents;

20.1.2 the NLM shall not be liable for damages, expenses or costs suffered or incurred by the Service Provider or any of its employees caused by performance of the obligation to implement the project or any failure to implement the project in accordance to this Contract or such unnecessary or irrelevant work done outside the scope of the project;

20.2 The NLM shall be entitled to recover from the Service Provider any direct loss or ~~expenses, excluding consequential damages, suffered or incurred by NLM~~ occasioned by the failure and/or incorrect implementation of the project in terms of this Contract.

21 FORCE MAJEURE

21.1 If a Party ('the Affected Party') is unable to perform all or part of its obligations in terms of this Contract due to a Force Majeure Event, the Affected Party shall, as soon as reasonably practicable but no later than forty eight (48) hours of it

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becoming aware of the Force Majeure Event, notify the other Party (the Non-Affected Party) in writing (a 'Force Majeure Notice') setting out:

- 21.1.1 full particulars of the Force Majeure Event;
 - 21.1.2 the impact of the Force Majeure Event on the Affected Party's obligations under this Contract;
 - 21.1.3 the Affected Party's reasonable estimate of the length of time which its performance has been and will be affected by such Force Majeure Event; and
 - 21.1.4 the steps which it is taking or intends to take or will take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder.
- 21.2 The Affected Party shall have the burden of proving both the existence of any Force Majeure Event and the effect (both as to nature and extent) which any such Force Majeure Event has on its performance.
- 21.3 If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling sixty (60) days after the receipt by the non-Affected Party of the Force Majeure Notice, either Party shall be entitled to cancel this Contract.
- 21.4 In the event of the occurrence of the Force Majeure Event the Affected Party shall not be liable for any failure to perform an obligation under this Contract, to the extent that:
- 21.4.1 such performance is prevented, hindered or delayed by a Force Majeure Event; and
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- 21.4.2 such performance is prevented, hindered or delayed by a Force Majeure Event; and
- reasonable action.
- 21.5 The Affected Party shall endeavour with due diligence to resume compliance with its obligations under this Contract and do all that it reasonably can to overcome or mitigate the effects of any Force Majeure Event.

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- 21.6 The Affected Party shall give the other Party (a) regular reports on the progress of the mitigation measures and (b) prompt notice on the cessation of the Force Majeure Event.
- 21.7 If the Force Majeure Event continues in effect for more than sixty (60) consecutive days, the Non-Affected Party shall have the right to terminate this Contract after having given fourteen (14) days written notice to the Affected Party of such termination at any time prior to the cessation of such Force Majeure Event.

22 CASUS FORTUITOUS

- 22.1 The provisions of the sub-clauses contained in clause 20 in respect of force majeure shall apply *mutatis mutandis* in respect of *Casus Fortuitous*.

23 DISPUTE RESOLUTION

- 23.1 In the event of any dispute or difference arising between the Parties in relation to or arising out of this Agreement, including the interpretation, rectification, termination or cancellation of this Contract, the Parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) Business Days.
- 23.2 If the Parties are unable to resolve such dispute or difference the matter will be referred to the Managing Director who shall record that it is their intention that the specified officials will use their respective best endeavours to resolve the issue in question as expeditiously as possible, but in any event within a period of fourteen (14) Business Days from the matter being referred to them.
- 23.3 Should the Senior Officials fail to resolve such dispute or difference within the aforesaid period or such longer period as the Parties may agree in writing, such dispute or difference shall be referred to arbitration as herein provided.
- 23.4 The arbitration shall be undertaken by a single arbitrator to be agreed upon between the Parties or, failing such agreement, within seven (7) Business Days of the dispute being referred to arbitration, be appointed according to the Rules of the Arbitration Foundation of Southern Africa upon the written request of either Party, subject only to the requirement that the arbitrator be experienced in the resolution of commercial disputes.

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- 23.5 The appointment of the arbitrator shall be final and binding on the Parties.
- 23.6 The Party having referred the dispute or difference to arbitration shall, within twenty-eight (28) Business Days of the appointment of the arbitrator, file its claim, setting out the nature of the claim and the detailed facts and documents in support thereof, by serving a copy thereof on the arbitrator and on the other Party.
- 23.7 Within twenty-eight (28) Business Days of receipt of the claim, the other Party shall file its answer thereto, setting out in detail the grounds and facts upon which the claim is resisted and any documents in support thereof, by serving a copy thereof on the arbitrator and the claiming Party.
- 23.8 Unless agreed to in writing by the Parties, the rules applicable to the filing of pleadings and of discovery in the conduct of civil proceedings shall be applicable.
- 23.9 The arbitrator shall, save as herein provided, have the powers conferred upon an arbitrator under the relevant statutory prescriptions according to South African law but shall not be obliged to follow the procedures under such legislation to the extent permitted in terms of the statute, it being the intention of the Parties that the dispute resolution procedures should be concluded as expeditiously as possible and the arbitrator shall be entitled to decide on such procedures as the arbitrator may consider desirable for the speedy determination of the dispute.
- 23.10 The decision of the arbitrator shall be final and binding on the Parties and may be made an order of court of competent jurisdiction.
- 23.11 The arbitrator shall make an award in respect of the costs of the arbitration having regard to the substantial success of each Party in the outcome of the proceedings.
- ~~23.12 The arbitration shall take place exclusively in Vancouver.~~
- 23.13 Nothing in this clause shall preclude either Party from seeking any interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings.

[Handwritten signature]
MAY
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J.P.

24 **NO WAIVER**

24.1 Failure by either Party to enforce any of the provisions of this Contract shall not be construed as a waiver by such Party of any such provisions nor in any way affect the validity of this Contract or any part thereof.

25 **CONFIDENTIALITY**

25.1 The Parties agree that the terms of this Contract, all information of the Parties that has been exchanged pursuant hereto, including but not limited to details concerning pricing will be received in strict confidence and not be divulged to any Person, save for employees directly involved with the execution of this Contract and be used only for the purpose of this Contract.

25.2 Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in this Contract will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.

25.3 These provisions do not apply to information which is:

25.3.1 publicly known or becomes publicly known through no unauthorised act of the recipient Party;

25.3.2 rightfully received by the recipient Party from a third party; independently developed by the recipient Party without use of the other Party's information;

25.3.3 disclosed by the other Party to a third party without similar restrictions;

25.3.4 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or

25.3.5 publicly disclosed with the other Party's written consent.

25.4 This Clause shall survive the termination of this Contract but will cease as being enforceable 12 months after the expiry date of this Contract.

ms
WMM
RWM
J.P

26 DOMICILIUM CITANDI ET EXECUTANDI

26.1 Any notice, notification, request, demand or other communication for any purpose under this Contract shall be in writing addressed -

NQUTHU LOCAL MUNICIPALITY

Private Bag, X5521
Nguthu,
3135

Tel: 034 271 6100

E-mail : mm@nquthu.gov.za

marked for the attention of the **Municipal Manager**

KUNENE MAKOPO RISK SOLUTIONS

Culross Court
16 Culross Road
Bryanston
2152

Tel: 010 900 1346

E-mail: dumi@kunenemakopo.com

marked for the attention of Mr. Madumetsa Makopo

or to such other addresses, or for the attention of such other persons or department, as Kunene Makopo Risk Solutions and NQUTHU LOCAL MUNICIPALITY may from time to time notify to each other.

26.2 All notices, notifications, requests, demands or other communications including accounts, shall be deemed to have reached the other Party -

26.2.1 if delivered by hand, on the date of delivery;

26.2.2 if posted by ordinary mail or registered post, on the 5th (fifth) calendar day following the date of such posting, and in the case of an account on the 5th (fifth) calendar day following the date of the account;

 MM
REM
J.P

26.2.3 if transmitted by facsimile or any other electronic medium acceptable to both Parties, on the first Business Day following the date of transmission / publication / delivery.

26.3 Either Party may, by written notice to the other, change its abovementioned *domicilium*.

27 ASSIGNMENT

27.1 No transfer of obligations, duties and rights vested in terms of this Contract shall be transferable unless permitted in writing by the respective parties.

28 GENERAL

28.1 This Contract may be signed by way of two or more counterparts.

28.2 The Parties acknowledge that the lapsing of the Contract due to effluxion of time shall cease the legal relationship between the Parties.


28.3 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

28.4 No addition to, variation or consensual cancellation of this Contract shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.

28.5 No indulgence by a Party to another, or failure strictly to enforce the terms hereof, shall be construed as a waiver or capable of founding an estoppel.

28.6 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all actions and taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Contract.

28.7 Save as is specifically provided in this Contract, the Service Provider shall not be entitled to cede or delegate any of its rights or obligations under this Contract without the prior written consent of the NLM.

 MW
R KM
J.P


- 28.8 Any notice or communication required or permitted to be given in terms of this Contract shall be valid and effective only in writing.
- 28.9 All communications engagement, liaison and submit of any written and/ or soft copies relating to it's the performance of the obligations in terms of this contract shall be by and between the Designated Representatives.
- 28.10 This Contract shall be governed by and interpreted in accordance with the laws of the republic of South Africa.

29. ENTIRE CONTRACT



This Contract contains all the express provisions agreed on by the Parties with regard to the subject matter of this Contract and supersedes all previous negotiations, arrangement or agreements in respect of this Contract.

[Handwritten signatures]
M.M.
K.R.M.
J.P.

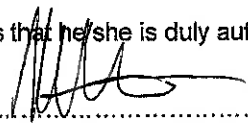
SIGNED for and on behalf of NQUTHU LOCAL MUNICIPALITY by the signatory below who warrants that she is duly authorised.

Signature:  Date: 14/12/2022
Full Names: MPHUMELELO B. JIYANE
Title: ~~MR~~ ACCOUNTING OFFICER

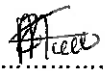

As Witnesses:


1. Full Names: PAULA NTLELI Signature: 
Title: ASSISTANT ACCOUNTANT - SCM
2. Full Names: Bonnie Buthezi Signature: 
Title: DATA CAPTURE - SCM

SIGNED for and on behalf of KUNENE MAKOPO RISK SOLUTIONS by the signatory below who warrants that he/she is duly authorised.

Signature:  Date: 14/12/2022
Full Names: Madumetsa Makopo
Title: Director

As Witnesses:

1. Full Names: Remindel Rendani Mudau Signature: 
Title: ~~Internal Booker~~
2. Full Names: Julia Masiya Signature: 
Title: Internal Booker

 MM
RKM
J.P