

**MARULENG MUNICIPALITY**



**SERVICE LEVEL AGREEMENT ENTERED INTO BY AND BETWEEN**

**MARULENG LOCAL MUNICIPALITY**

(Hereinafter referred to as “The Municipality” and duly represented by **Mr Lesley Muroa** in his capacity as the Acting Municipal Manager duly authorized).

And

**KGORA AFRIKA FUND (Pty) Ltd**

(Herein referred to as “The Transaction Advisor” and duly represented by **Mr. Bolokang Derrick Montshwe** in his capacity as the Representative of the **KGORA AFRIKA FUND** and duly authorized).

And

**Triviron Project Management (Pty) Ltd**

A company duly registered in the Republic of South Africa under Registration Number  
**2006/19791/07**

Herein represented by **Mr Phenyo Mathopa** in his capacity as Managing Director.

(Hereinafter referred to as the “Investor/Investor Operator”).

## **MARULENG AND TRIVIRON SOLAR PROJECT SPV**

(in its capacity as “Investor/ Investor Operator SPV”) in respect of the Administration, Implementation, Management and Operation of the MLM/SCM/31/2022.

- 1) **MARULENG AND TRIVIRON SOLAR PROJECT (MTSP)** is the name of the Special Purpose Vehicle (SPV).
- 2) The SPV is formed by the Investor/Investor Operator, the transaction advisor and MLM.
- 3) The main purpose of the SPV is the administration, implementation, management and operation of MLM/SCM/31/2022,
- 4) The shareholding allocations during the operation phase (Phase III) by the SPV, shall include 80% (Eighty Percent) shares allocated towards the Investor/Investor Operator, 15% (Fifteen Percent) shares allocated towards the Transaction Advisor and 5% (five percent shall be) to MLM, subject to a shareholding agreement concluded upon signing the SPV agreement.
- 5) The duty of the Investor/Investor Operator under the SPV agreement is to provide investment as per this Service Level Agreement for the administration, project implementation (planning phase and construction phase) and operation of the Project as per MLM/SCM/31/2022.
- 6) The duty of the Transaction Advisor under the SPV agreement is to provide oversight, monitoring and ensure compliance with the Project as per MLM/SCM/31/2022.
- 7) The role of MLM under the SPV is to provide oversight and ensure governance Project as per MLM/SCM/31/2022.

## 1. PREAMBLES

**AND WHEREAS MLM** has awarded Bid Number: MLM/SCM/31/2022 to the Investor/Investor Operator and the Investor/Investor Operator has accepted the tender for the provision of the comprehensive large-scale project related to the implementation of a build, operate, transfer (“BOT”) model of a solar photovoltaic facility generating a maximum 100MWp electricity as defined under Bid Number: MLM/SCM/31/2022.

**AND WHEREAS** the Investor/Investor Operator as part of the terms and conditions of the said Bid warrants the services and administration thereof as stated under Bid MLM/SCM/31/2022 and further shall provide a comprehensive implementation in relation to the BOT of a solar photovoltaic facility generating a maximum 100MWp electricity as per the service levels set out herein.

**AND WHEREAS** the Investor/Investor Operator agrees to enter into this service level agreement, which service level agreement is subject to the general conditions of the contract applicable to government bids, contracts and orders.

**THEREFORE**, the parties wish to record in writing the terms and conditions of their agreement relating to the aforementioned and matters incidental thereto.

## 2. DEFINITIONS

- 2.1 **“Agreement”** means this Service Level Agreement, accepted bid document and any addendums including all annexures hereto.
- 2.2 **“Annexure 1”** means Phase I which relates to the planning of the Project.
- 2.3 **“Annexure 2”** means Phase II which relates to the construction of the Project.
- 2.4 **“Annexure 3”** means Phase III which relates to the implementation of operations in respect of the Project.
- 2.5 **“Annexure 4”** means the Special Purpose Vehicle Agreement entered into between MLM, the Investor/Investor Operator and the Transaction Advisor.
- 2.6 **“Annexure 5”** means Project Preparatory Agreement entered into between the Parties.
- 2.7 **“Applicable Laws”** means all applicable laws, ordinances, regulations, judgements and orders of any competent Court, Acts and Regulations;
- 2.8 **“Bid Document”** means an offer to supply goods and services to MLM at a specified price including Terms of Reference and Bid Document(s) and all the related annexures;
- 2.9 **“Business day”** means any day other than a Saturday, Sunday or South African public holiday.
- 2.10 **“Contract”** means this Service Level Agreement and includes the General Conditions of Contract, Special Conditions of Contract Form of Bid MLM/SCM/31/2022 Schedule of Prices, the specifications including any schedules, drawings, patterns, samples

attached to the specification, the service level/agreement with annexures and any agreement entered into in terms of the General Conditions of Contract applicable to government bids, contracts and orders and all other schedules hereto;

2.11 **“Day”** means a calendar day.

2.12 **“Deliverables”** means any information collected, a document drawn, a programme devised.

2.13 **“Effective date”** means the 6th of March 2023 notwithstanding the signature date;

2.14 **“Final delivery certificate”** means the document issued by MLM confirming that all the known defects have been rectified and that the works, goods or services appear in good order and have been accepted;

2.15 **“IDP”** means Integrated Development Plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

2.16 **“Indemnified Party”** means seeking indemnification from the Investor/Investor Operator pursuant to clause 9.2;

2.17 **“Investor/Investor Operator”** means the legal private entity appointed to invest in the projects allocated by MLM;

2.18 **“MLM”** means Maruleng Local Municipality.

2.19 **“Letter of acceptance”** means the written communication by the Investor/Investor Operator to MLM recording the acceptance of funding, building, operating and transfer of a solar photovoltaic facility generating a maximum of 100MWp electricity within Maruleng Local Municipality subject to further terms and conditions in this Agreement;

- 2.20 **“Local Municipality”** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is as defined in the Municipal Finance Management Act [No. 56 of 2003];
- 2.21 **“Month”** means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month;
- 2.22 **“Payment Schedule”** means the schedule of payments attached to this Agreement.
- 2.23 **“Procurement Policy”** means the procurement policies of MLM;
- 2.24 **“Project”** means Build, Operate and Transfer (BOT) of solar photovoltaic facility generating a maximum 100MWp electricity to be implemented over a 30-year period;
- 2.25 **“Regulations”** means the Municipal PPP Regulations in relation to the MFMA as amended from time to time;
- 2.26 **“Services”** means the services to be provided by the Transaction Advisor in terms of this Agreement;
- 2.27 **“Signature Date”** means the date of signature of this Agreement by the Party signing last;
- 2.28 **“Terms of Reference”** means the document titled Terms of Reference issued by MLM under bid **No MLM/SCM/31/2022** which forms an integral part of this Agreement; and
- 2.29 **“Termination Date”** means the date of termination of this Agreement in accordance with its terms; and

2.30 “**The parties**” means MLM, the Investor/Investor Operator, the Transaction Advisor and the Investor/Investor Operator SPV;

2.31 “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, Act NO. 89 of 1991 as amended;

2.32 “**Warranties**” means collectively any and/or all warranties (if any) given by the service provider in terms of this agreement;

### 3. Interpretation

3.1. In this agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:-

3.2. An expression which denotes;

3.2.1. Any gender includes the other genders;

3.2.2. a natural person includes an artificial or juristic person and vice versa;  
and

3.2.3. the singular includes the plural and vice versa.

3.3. Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date of this agreement, and as amended or re-enacted from time to time.

- 3.4. When any number of days is prescribed, such shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is a business day.
- 3.5. Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.
- 3.6. Clause headings have been inserted for reference purposes only and should not be utilised in the interpretation thereof.
- 3.7. If any provision in the definition is a substantive provision conferring to rights or imposing obligations on any party, notwithstanding that it is only in this interpretation clause, effect shall be given to it as if was a substantive *provisio* in the body of this Agreement.
- 3.8. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 3.9. Expiration or termination of this agreement shall not affect such of the provisions of this Agreement that expressly provide that operate after such expiration or termination, or which of necessity must continue to have effect after such expiration or termination provide for this.
- 3.10. The *contra-preferentem* rule shall not be applicable in the interpretation of this agreement. The rule means that the document is interpreted in favour of the party not represented in the drafting of the agreement.

- 3.11. Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 3.12. In the event of any inconsistency or conflict between this Agreement and the terms and conditions of any other documentation or annexure forming part of this Agreement, then the terms and conditions of this Agreement will prevail.
- 3.13. The various documents forming part of this Agreement are to be taken as mutually explanatory except where they are inconsistent or specifically excluded.

#### **4. INTRODUCTION**

- 4.1 MLM has identified various opportunities for economic and infrastructure development to benefit the municipality at large. These multi-sectoral opportunities have a high potential of creating jobs, improving livelihoods, ensuring household food security and growing the economy, hence they are part of the IDP of the Municipality and conform to the district development model as well as a special economic zone model
- 4.2 This Project requires a massive capital outlay which neither the MLM or Government, in general, can afford. Therefore, MLM resolved to seek capital solutions and implement all the off-balance sheet and key developmental projects in the IDP. MLM appointed a Transaction Advisor (Kgora Afrika Fund Pty Ltd) to raise capital for the implementation of the identified project over a period of 3 (three) years. MLM advertised the Appointment of an Investor/Investor Operator to fund, develop and operate a maximum of 100MWp Solar Photovoltaic Facility on the grid.
- 4.3 The Parties agree that the objective of this Project is to effectively provide electricity to households that are not currently connected to the grid; to provide alternative electricity to private companies, industrial companies and households and introduce households to environmentally friendly and clean energy.

## 5. PROJECT DESCRIPTION

5.1 The Project as defined under this Agreement is a BOT of solar photovoltaic facility generating a maximum 100MWp electricity which shall have the implementation cycle of 30 years. This entails entering into various agreements, availability of land, setting up an SPV, implementing all the three phases as outlined and benefiting the local Municipality.

## 6. APPOINTMENT OF INVESTOR/INVESTOR OPERATOR

6.1 MLM has appointed TRIVIRON PROJECT MANAGEMENT (PTY) LTD, which has accepted such appointment, to fund and deliver the services subject to the terms and conditions of this agreement, the overall MLM/SCM/31/2022 conditions, terms of reference as well as the Project Implementation Plan (Planning Phase “Annexure 1”, Construction Phase “Annexure 2” and Operation Phase “Annexure 3”).

6.2 The appointment of TRIVIRON PROJECT MANAGEMENT (PTY) LTD as the investor in terms of Clause 4.1 above may not be ceded or assigned to any third party, other than that of the Investor/Investor Operator SPV under the SPV agreement.

6.3 MLM has approved the appointment of **TRIVIRON PROJECT MANAGEMENT (PTY) LTD** as an Investor/Investor Operator to fund, develop and operate a maximum of 100MWp Solar Photovoltaic Facility on the grid on a BOT model.

6.4 The National Treasury or MLM shall not be required to provide financial guarantees by the investor/investor operator.

6.5 The investor/investor operator shall enter into a power purchase agreement with the Local Municipality and shall further enter into a “payment agreement” to assure the investor/investor operator of repayment ability.

6.6 All rights and obligations arising from this agreement shall be deemed to have come into operation on the effective date.

6.7 Neither the appointment of the Investor/Investor Operator in clause 4.1 nor anything in this agreement shall give rise to or be construed as giving rise to an employer/employee relationship between the parties, nor shall it give rise to a joint venture nor an agreement of partnership between the parties, nor shall it give rise to a labour broking agreement.

6.8 The parties acknowledge that neither of the parties has any authority whatsoever to represent or to bind the other party in any capacity whatsoever.

6.9 Parties hereby accept the appointment subject to the terms and conditions as set out hereunder.

6.10 Parties hereby note that the Local Municipality have all the governance and management structures in place and are credit worthy.

## **7 DURATION AND TERMINATION**

7.1 This Agreement shall commence on the effective date and have the project cycle of overall 30 years (thirty) years with planning and operations inclusive of this time frame.

**7.2 The duration as provided in the Terms of Reference shall be allocated with the initial 8 (eight) months of planning (Phase I), followed by 36 (thirty-six) months of construction (Phase II) and the last 27 (twenty-seven) years of operation.**

7.3 The parties agree that should this Agreement be extended for any reason whatsoever, such extension shall be made by notice in writing and shall continue to be of force and effect under the

same terms and conditions as stipulated in this Agreement unless the parties agree otherwise in writing.

7.4 Renewal for an extension period provided in clause 5.3 may not exceed two (2) years and will be considered amongst all Parties based on the performance and other relevant factors.

7.5 The Parties agree that should the Investor/Investor Operator seek termination of this Agreement, Investor/Investor Operator shall upon not less than 6 (six) months prior, provide written notice to MLM, the Transaction Advisor and the Investor/Investor Operator SPV, provided that the termination of the Investor Investor/Investor Operator's appointment in terms of this Agreement shall only become effective upon the appointment of a substitute Investor/Investor Operator.

7.6 On and after the termination of the Investor's appointment under this Agreement pursuant to 5.5, all rights, authority and powers of the Investor/Investor Operator under this Agreement shall (except where otherwise provided) be terminated and be of no further effect and the Investor/Investor Operator.

7.7 On termination of the appointment of the Investor/Investor Operator under the provisions of this clause 5, MLM and the Transaction Advisor shall be entitled to receive, on the date which such amounts would have fallen to be paid but for such termination, the servicing fee and/or other monies accrued up to the termination but shall not be entitled to any other or further compensation unless otherwise stated herein. Such monies so receivable by the MLM and/or the Transaction Advisor shall be paid by the Investor/Investor Operator SPV on the dates on which they would otherwise have fallen due under this Agreement.

## 8 PROCUREMENT

8.1 The Investor/Investor Operator SPV shall comply with the budget provisions as prescribed in the special purpose vehicle agreement stipulated in **Annexure 4**.

8.2 The minimum investment value for the Project is R1 300 000 000.00 (one billion, three hundred million rand) per 100MWp for designing, building, operating and transfer a **solar photovoltaic facility as per the Project Management Plan in Annexure 1, Annexure 2, Annexure 3, Annexure 4 and Annexure 5**.

8.3 The invested amount provided in clause 6.2 includes fees to be paid to the Transaction Advisor.

8.4 MLM hereby agrees to comply with the Municipal Financial Management Act, as amended or replaced.

8.5 The Transaction Advisor hereby agrees to comply with all Treasury Regulations concurrently with the National Treasury Practice Note SCM 3 of 2005 pursuant to MFMA as amended or replaced for its services rendered under this Agreement.

8.6 Despite anything to the contrary contained in any other law, the allocated funds may only be utilised for purposes for which they are allocated.

8.7 Pursuant to this Agreement, the Investor/Investor Operator SPV shall enter into a Land Availability Agreement (“LAA”) under the following terms;

**8.7.1 MLM shall facilitate the acquisition or lease of land within its boundaries for the Investor/Investor Operator SPV, whereby the Investor/Investor Operator SPV shall in respect of the land to be leased, shall implement the Project on a BOT model under the terms of this Agreement.**

8.7.2 The Parties hereby agree to proceed with the Project on site that shall be allocated by MLM, in accordance with this agreement.

8.8 The Investor/Investor Operator may withhold payment of the allocated funds or any portion thereof if:

- (a) MLM and the Transaction Advisor do not comply with conditions regarding the allocation of funds as provided for in this Agreement; or
- (b) Expenditure on previous payments reflects significant irregular spending for which no satisfactory explanation is given.

8.9 The Investor/Investor Operator shall, before withholding payment as per Clause 6.6 above, give the MLM and the Transaction Advisor:

- (a) Written notice of the intention to withhold the payment; and
- (b) An opportunity for the MLM and the Transaction Advisor to submit written representations within seven (7) days as to why the payment should not be withheld.

8.10 The Investor/Investor Operator hereby undertakes to adhere that the implementation of the Project will be in accordance with the specifications as provided by MLM, this Agreement (including all annexures), and any other agreement subject to the Project.

## 9 DUTIES OF THE INVESTOR/INVESTOR OPERATOR, MLM AND THE TRANSACTION ADVISOR

### 9.1 Duties of MLM

The responsibilities of MLM in terms of this Agreement shall include *inter alia* the following:

- 9.1.1 MLM shall reserve itself the right to inspect the project work done by the Investor/Investor operator and/or Investor/Investor Operator SPV company;
- 9.1.2 MLM shall ensure that all parties comply with the agreement and monitor the Project; and
- 9.1.3 Notwithstanding anything contained in this Agreement, MLM reserves the discretion to verify and confirm any information and/or document submitted by the other Parties in respect of the performance and execution of the large-scale projects, duties and obligations in this Agreement.
- 9.1.4 MLM shall verify work done by the Investor/Investor Operator SPV.
- 9.1.5 MLM undertakes to render all reasonable assistance to the Transaction Advisor and the Investor/Investor Operator and/or Investor/Investor Operator SPV to enable them to achieve the deliverables and shall be referred to it for consideration or approval is handled in an expeditious manner.
- 9.1.6 Additional to or in conjunction with the provisions of the above clause, MLM must permit the Investor/Investor operator SPV to provide notice of the intention to withhold or stop the disbursement of funding stating the reasons and the Investor/Investor Operator SPV shall give MLM and the Transaction Advisor an opportunity to submit written representations, within 7 (seven) days, as to why the allocation should not be withheld or cease altogether.

## 9.2 Duties of Investor/Investor Operator

The Investor/Investor Operator in terms of this Agreement, agrees *inter alia* on the following;

- 9.2.1 The Investor/Investor Operator shall invest at least an amount of R1 300 000 000.00 (one billion, three hundred million rand) per 100MWp for it to design, build, operate and transfer a maximum of 100MWp Solar Photovoltaic Facility on the grid.
- 9.2.2 The Investor/Investor Operator shall remunerate the Transaction Advisor for Services rendered as set out in the Payment Schedule of the Special Purpose Vehicle agreement Annexure 5.
- 9.2.3 The Investor/Investor Operator undertakes to pay over funds in accordance with the Phases provided in Annexure 1 in order to achieve the objectives, subject to the provisions of this agreement and the satisfactory achievement of all deliverables.
- 9.2.4 **The Investor/Investor Operator SPV undertakes the implementation of the Project with due skill, diligence, regularity, expedition and completeness, and shall exercise all reasonable skill, care and diligence in the execution in respect of the implementation of the BOT of the Project.**
- 9.2.5 The Investor/Investor Operator shall at all material times comply with the relevant provisions of this Agreement, insofar as it pertains to the activities of the implementation of the Project.
- 9.2.6 The Parties agree that the Investor/Investor Operator SPV shall ensure that the Project is implemented according to the Project Management Plan provided in “Annexures 1, 2 and 3”.

- 9.2.7 The Investor/Investor Operator shall provide funds as per clause 7.2.1 for the implementation of the Project.
- 9.2.8 The Investor/Investor Operator hereby undertakes that any information or document submitted by it in terms of this Agreement shall be true and correct.
- 9.2.9 The Investor/Investor Operator similarly undertakes to act in good faith and afford all reasonable and necessary co-operations in fulfilling its obligations in terms of this Agreement.
- 9.2.10 The Investor/Investor Operator SPV shall execute and finalize its obligations within the prescribed time period.
- 9.2.11 The Investor/Investor Operator SPV shall ensure that sound financial management and accountability system is in place and provide the Transaction Advisor and MLM with weekly, monthly and annual reports.
- 9.2.12 The investor/investor Operator SPV shall conduct Project feasibility, planning, design, business plan, construction management schedules, certification, and procurement of deliverables according to the scope of work of the Project as agreed upon in Annexure 5.
- 9.2.13 The Investor/Investor Operator SPV shall train beneficiaries according to need analysis and marketing of the Project. The training and the marketing plans should be submitted to MLM CEO for approval of the implementation.
- 9.2.14 The Investor/Investor Operator SPV shall provide beneficiaries with aftercare or mentorship in conjunction with extension support from MLM in accordance with the scope of work provided in “Annexure 1”.

9.2.15 The Investor/Investor Operator hereby warrants that the training mentoring and support will be assessed beforehand in conjunction with the MLM.

9.2.16 The Investor/Investor Operator SPV shall outsource 30% (thirty percent) of Local Municipality entities within various/all local municipalities in LDM and provide evidence pursuant to this Agreement to be reached with the MLM.

9.2.17 Should the Investor/Investor Operator SPV, subject to clause 7.2.16 be unsuccessful, in the eventuality that the Investor/Investor Operator SPV cannot outsource Local Entities, the Investor/Investor Operator shall as an alternative to 7.2.16 outsource Provincial Entities within the province of Polokwane.

9.3 The following shall further be operational duties or obligations of the Investor/Investor Operator:

9.3.1 The Investor/Investor Operator shall ensure that Investor/Investor Operator SPV shall provide warranties according to the manufacturer's prescripts or as outlined by the scope of the Project;

9.3.2 Before the implementation of the Project by the Investor/Investor Operator SPV, the Investor/Investor Operator will submit a detailed project plan (budget breakdown) to the Transaction Advisor and MLM Accounting Officer for approval;

9.3.3 The MLM District office and/or town shall be used at all times as a logistical centre point and travelling costs will be calculated from this point;

- 9.3.4 Payments by the Investor/Investor Operator will be done according to milestones and payment certificates from relevant experts as agreed with the MLM District Director and/or relevant manager; and
- 9.3.5 In order for the Project to claim VAT, all invoices should be issued out in the name of the Project where applicable.

#### **9.4 Duties of the Transaction Advisor**

- 9.4.1 The Transaction Advisor shall be responsible to ensure that the project complies with environmental requirements, Municipal by-laws, applicable legislations or Acts and standards.
- 9.4.2 The Transaction Advisor shall ensure that the Investor/Investor Operator SPV obtains all rights (including water rights) and any right necessary for performing and completing the entirety of the Project.
- 9.4.3 The Transaction Advisor shall ensure that signed monthly progress reports are to be provided to MLM on or before the 7<sup>th</sup> of the following month.**
- 9.4.4 The Transaction Advisor fee is 5% (Five percent) of the total Project budget allocated as provided in clause 6.3.
- 9.4.5 The fees pursuant to clause 7.4.4 comprise project management support costs, planning costs, administrative fees, coordination and oversight costs.
- 9.4.6 The Transaction Advisor shall in accordance with the terms set out in this Agreement, in all professional matters render its Services as a faithful advisor to MLM and, in so far as any of its duties are discretionary, act fairly between MLM, the Investor/Investor Operator and the

Investor/Investor Operator SPV and any third parties during the BOT implementation of the Project.

9.5 Subject to this clause 7 aforementioned duties required by Parties to this Agreement, MLM and the Investor Operator agree to conclude a Project Preparatory Agreement (“PPA”), annexed herein as “Annexure 5”, therein setting terms and conditions which outline the terms of scope of work, work-breakdown and detailed plans of Phase 1 on the basis of the delivery of the Project on a BOT model as set in this Agreement and the PPA (Annexure 5).

## **10 FEES AND DISBURSEMENTS**

10.1 It is reiterated and agreed that the minimum investment value for the duration of this Agreement amounts to a total cost of R1 300 000 000.00 (one billion, three hundred million rand) per 100MWp.

10.2 The Transaction Advisor on behalf of MLM will submit written invoices in all financial years on its letterhead and provide quarterly reports in order for payments to be processed timeously.

10.3 All tax invoices of the Investor/Investor Operator SPV shall contain the Investor/Investor Operator’s VAT number, bank account details belonging to Investor/Investor Operator SPV and the address of both the Investor/Investor Operator SPV and the Investor/Investor Operator.

10.4 Payment in relation to the Transaction Advisor’s Services rendered and the BOT implementation of the Project by the Investor/Investor Operator SPV shall be made within 30 (thirty) days upon receipt of an original tax invoice(s) furnished by the Transaction Advisor, in accordance with the delivery and approval of services rendered in line with the provisions of Annexure 1, Annexure 2 and Annexure 3.

10.5 All money due to the Investor/Investor Operator SPV and/or the Transaction Advisor shall be paid into the Investor/Investor SPV and/or the Transaction Advisor’s bank account, which bank

account details shall be confirmed by the relevant bank and submitted to the Investor/Investor Operator, on the bank's letterhead or with a bank's stamp.

10.6 The Service Provider shall endeavour to register for VAT with South African Revenue Service ("SARS"), if not registered on the Commencement Date, within 6 (six) months from the Signature Date.

## **11 LIABILITY**

11.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement;

11.1.1 The Investor/Investor Operator, the Investor Operator SPV, nor the Transaction Advisor shall not be liable to MLM, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of Investor/Investor Operator, the Investor Operator SPV, nor the Transaction Advisor to pay penalties and/or damages to the MLM; and

11.1.2 The cumulative liability of Investor/Investor Operator and the Investor Operator SPV towards MLM whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

11.2 Notwithstanding any provision to the contrary contained in 9.1 or elsewhere in this Agreement, the Investor/Investor Operator shall only be liable for consequential or indirect damages to an Indemnified Party if such consequential or indirect damages are suffered by an Indemnified Party as a result of fraud or the wilful default on the part of the Investor/Investor and/or Investor/Investor Operator SPV.

11.3 The Investor/Investor Operator SPV agrees to indemnify MLM from any liability arising or alleged to arise out of any failure of the goods and/or services to conform to any laws, orders, regulations, requirements or standards. Should the cost of inspection arise or alleged to arise, the Investor/Investor Operator SPV shall bear any cost of such inspection of the goods and/or services in respect of the BOT implementation of the Project if so required by any law.

11.4 Unless otherwise provided in any further written agreement, neither Party shall be liable to the other Party/Parties for any indirect, consequential, special, incidental or punitive damages, including without limitation, loss of use or lost business, revenue, profits, anticipated savings, reputation or goodwill arising in connection with the contracted work.

## **12 BREACH**

1.1. If a Party to this Agreement (the breaching Party) breaches any obligation in terms of this Agreement and after receiving written notice from the other Party to this Agreement (“the aggrieved Party”) requiring such breach to be rectified within the period stated in such notice (which period shall be reasonable, having regard to the nature of the obligation to be performed and having regard further to the time reasonably required for such performance and which period shall in any event not be less than thirty (30) days, and the breaching party fails to remedy such breach within the relevant period, the aggrieved Party shall without prejudice to any of its rights in law or in terms of this Agreement, be entitled to cancel this Agreement by way of three (3) business days written notice to the other Party. The aggrieved Party shall then be entitled to recover damages suffered as a result of the breach from the other Party.

### 13 DISPUTE RESOLUTION AND ARBITRATION

- 13.1 Should any difference or dispute, except in breach of an obligation in terms of this Agreement arise at any time between the Parties, the duly authorised representatives and/or senior officials of each Party shall meet within 5 (five) Business Days or such period as the Parties may agree, from the date on which the dispute arose to resolve the dispute amicably.
- 13.2 In the event of a dispute arising between the Parties, it will, pending resolution of the dispute, continue to fulfil all other obligations under this Agreement that is/are not in dispute.
- 13.3 If the dispute is not resolved at the meeting contemplated in clause 11.1, or extended meeting as the Parties may agree to in writing, or such meeting does not take place within the 5 (five) Business Day period contemplated in clause 11.1 or such later date at the Parties may agree in writing, then either of the Parties shall for a period of 10 (ten) Business Days thereafter be entitled to refer the dispute to the Arbitration Foundation of Southern Africa ("**AFSA**") to be determined by arbitration in terms of the Rules of AFSA as amended from time to time (the "**Rules**"), such arbitration shall be held in Hoedspruit or Polokwane.
- 13.4 The appointment of the arbitrator shall be agreed upon between the Parties in writing but, failing agreement between them, within a period of 10 (ten) Business Days after the arbitration has been demanded in terms of clause 11.3, above either Party shall be entitled to request the AFSA to make the appointment and, in making such appointment, to have regard to the nature of the dispute. If AFSA fails or refuses to make the nomination within 10 (ten) days, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 13.5 There shall be one arbitrator who shall be a practising senior counsel or a practising attorney with not less than 15 (fifteen) years of experience as an attorney.

- 13.6 The arbitrator shall have the powers conferred upon an arbitrator under the Rules.
- 13.7 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on the due date and/or fails to appear at the arbitration, which judgment the arbitrator shall be entitled to rescind on good cause shown in terms of the legal principles applicable to rescission of judgments.
- 13.8 The decision of the arbitrator shall be subject to appeal by either Party giving the other written notice with the grounds of appeal within 15 (fifteen) Business Days of the single arbitrator's award. The appeal arbitration panel will consist of three arbitrators being practising senior counsels or, alternatively, practising attorneys with not less than 15 (fifteen) years of experience as attorneys. The appeal will be conducted in terms of the appeal rules of AFSA.
- 13.9 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 13.10 The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 13.11 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 13.12 Should the Parties fail to amicably or not agree to resolve the issues through arbitration procedures, whether in regard to the meaning or effect of any term of this Agreement, the implantation of any Party's obligations under this agreement, or any other matter arising from or incidental to it, then in that event, such differences or dispute shall be remedied by the court of law which parties agree to the jurisdiction of the High Court of South Africa, Limpopo Division: Polokwane.

## **14 CESSION AND DELEGATION**

14.1 The Investor/Investor Operator may cede all or any of its rights in or to and/or delegate all or any of its obligations under this Agreement to the Investor/Investor Operator SPV pursuant to the SPV Agreement.

14.2 Save as provided in 4.2 and 4.3, no party may cede its rights or interest in or to or delegate its obligations under this Agreement to any third party without the prior written consent of the other parties to this Agreement, which consent shall not be unreasonably withheld or delayed.

## **15 SEVERABILITY**

15.1 All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## **16 FORCE MAJEURE**

16.1 If any Part should be prevented or restricted, directly or indirectly, from performing all or any of the obligations under this Agreement by reason of strike, labour dispute, lockout, fire explosion, flood, riot, war, accident, Act of God, embargo, legislation, regulations or directive having the force of law, civil commotion, unrest of disturbance, compliance with any order or instruction, or any authority, or without limitations, any other cause beyond its control, anywhere in the world, all or any of which shall constitute force majeure for the purpose hereof, the Party which is so

effected (the effected party) shall be relieved of the performance of its obligations hereunder during the period that such event and its obligation during the period that such event and its consequences shall continue, but only to the extent so prevented, and shall not be liable for any delay or failure in the performance of any of its obligations hereunder, or loss or damage whether general, special, or consequential, which the other party (the unaffected party) may suffer due to or resulting from such delay or failure, provided always that written notice shall be given by the affected party at the earliest possible opportunity by email, telephone or telex of the occurrence of the event constituting the force majeure, together with details thereof and estimate the period of the time for which ensure.

16.2 The affected party shall use reasonable endeavours to terminate the circumstance giving rise to the force majeure and upon the termination of the force majeure will forthwith give notice thereof by telefax, or telephone to the unaffected party.

16.3 This Agreement will not unless otherwise agreed in writing, be terminated by the intervention of force majeure, provided that if such force majeure continues for a period in excess of 90 (ninety) days, either party may cancel the agreement by issuing a 10 (ten) business day written notice to the other party.

## **17 CHANGE IN SCOPE OF WORK**

17.1 If any circumstances arise during the currency of this Agreement, which necessitates the rendering of additional services to those recorded in Annexure 1, Annexure 2 and Annexure 3, then the scope of services can be varied by written agreement of the Parties, as follows:

17.1.1 The Investor/Investor Operator SPV shall submit the pricing and a schedule impact for the proposed variations.

17.1.2 Unless agreed by the parties, the Investor/Investor Operator SPV shall not be required to commence additional work until receiving written approval from MLM.

## **18 INTELLECTUAL PROPERTY**

All the intellectual property developed for and associated including any templates, electronic programmes, methodology or other items, created by the Investor/Investor Operator SPV while implementing the Project on a BOT model, shall become the property of MLM.

## **19 VARIATION, CANCELLATION AND WAIVER**

19.1 No agreement purporting to vary, add to, delete or cancel this Agreement and no waiver of any rights in terms of this Agreement shall be effective unless reduced to writing and signed on behalf of the Parties.

19.2 No addition to, variation or agreed cancellation of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

## **20 DOMICILIUM CITANDI ET EXECUTANDI**

The Parties choose their *domicilium citandi et executandi* for all purposes arising out in connection with this Agreement and the following addresses;

### **20.1 Maruleng Local Municipality**

65 Springbok Street

Hoedspruit

**20.2 TRIVIRON PROJECT MANAGEMENT (PTY) LTD**

128 Marshall Street

6B Amy Park

Polokwane

0699

**20.3 KGORA AFRIKA FUND (PTY) LTD**

Maxwell Office Park,

Waterfall City,

Midrand,

Gauteng,

2090

20.4 Each party shall be entitled from time to time, by giving written notice to the others, to vary its physical domicile to any other physical address (not being a post office box or Poste Restante) within the Republic or to vary its postal domicile or its facsimile domicile to any other within the Republic.

20.5 This domicile clause shall not operate to invalidate the giving or receipt of any notice, which is received by the addressee other than by a method referred to in this clause.

20.6 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.

**21 OFFICIAL CONTACT PERSONS**

21.1 MLM has appointed **Mr Lesley Muroa, the Acting Municipal Manager of MLM** or his duly authorised representatives as the official contact person between the parties for reporting, assistance, and control process *inter alia*.

21.2 The Investor/Investor Operator has appointed **Mr Phenyo Mathopa, the Chief Executive Officer of TRIVIRON PROJECT MANAGEMENT (PTY) LTD** or his duly authorised representatives as the official contact person between the parties for reporting, assistance, and control process *inter alia*.

21.3 The Transaction Advisor has appointed **Mr Bolokang Derrick Montshwe, the Managing Director of Kgora Afrika Fund (Pty) Ltd** or his duly authorised representatives as the official contact person between the parties for reporting, assistance, and control process *inter alia*.

## **22 GOVERNING LAW AND JURISDICTION**

22.1 This Agreement shall be construed, governed and interpreted in accordance with the Laws of the Republic of South Africa and the High Court of South Africa, Free State Division: Bloemfontein shall have exclusive jurisdiction in relation to any claim, dispute, or difference concerning this Agreement or any matter arising from it.

## **23 TOTALITY OF THIS AGREEMENT**

23.1 This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with in this Agreement and or presentations, terms, conditions warranties or material evidence (express or implied) not contained therein shall be binding to the Parties.

## **24 ACCOUNTING SYSTEMS**

- 24.1 Investor/Investor Operator shall ensure that the Investor/Investor Operator SPV shall install and operate a suitable professional accounting system to enable the Investor/Investor Operator SPV to comply with disclosure requirements including good business management and control.
- 24.2 Management of the Investor/Investor Operator SPV must satisfy MLM that transparent, effective economical beneficiation towards local municipalities within LDM and reliable financial control systems are in place, and further that sufficient original documentation (source documents for all transactions) is kept backing up all payments.
- 24.3 Over and above the signed monthly progress report and invoice all Parties undertake to provide financial records concerning the payment of their staff at any time, should it be deemed necessary.

## **25 TAXATION**

- 25.1 The Investor/Investor Operator SPV shall promptly comply with its tax obligations to the Republic of South Africa and render half- yearly proof to MLM and the Transaction Advisor in this regard.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2026.

\_\_\_\_\_

**Mr Lesley Muroa**

AMM of MLM

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2026.

\_\_\_\_\_

**PHENYO MATHOPA**

Managing Director of TRIVIRON PROJECT MANAGEMENT (PTY) LTD

**AS WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2026.

\_\_\_\_\_

**MR. BOLOKANG DERRICK MONTSHWE**

Managing Director of Kgora Afrika Fund

**AS WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2026