

MEMORANDUM OF AGREEMENT

between

**THE PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS
KWAZULU-NATAL
(The "Department")**

represented by **MR. MDUDUZI ORVILLE SIKHUMBUZO ZUNGU** in his capacity as **HEAD OF DEPARTMENT** and Accounting Officer duly authorised in terms of section 12(1)(b) of the Public Service Act, 1994 (Proclamation 103 of 1994) as amended.

And

UMDONI LOCAL MUNICIPALITY

Represented by

MR. N. G. KHUMALO in her capacity as **ACTING MUNICIPAL MANAGER**
and duly authorized by resolution dated **04 OCTOBER 2024**

And

MGM PROJECT MANAGEMENT (PTY) LTD

("the IA") represented by

MR L. N. GODLWANA in his capacity as the
MANAGING DIRECTOR

duly authorized by a resolution dated **15 NOVEMBER 2024**

MALANGENI PHASE 2 RURAL HOUSING PROJECT: STAGE 2

K: 13030001/2

PREAMBLE:

WHEREAS The Department, Municipality and IA have previously signed and concluded a Tripartite Agreement dated **13 May 2024** (hereinafter referred to as the "Main Agreement") and attached hereto marked Annexure "**A**" for the implementation of the **Malangeni Phase 2 Rural Housing Project: Stage 2;**

AND WHEREAS The period in the Main Agreement has lapsed by effluxion of time leaving the Parties without a valid Agreement to regulate their relationship;

AND WHEREAS The Department has now approved per Approvals dated 30 September 2024 and 12 November 2024 for the subsidy alignment and renewal of the contract;

NOW THEREFORE IT IS AGREED:-**1. INTERPRETATION**

1.1 In this Agreement and unless inconsistent with the context:

1.1.1 words of the one gender shall include words of the other gender;

1.1.2 words importing the singular shall be deemed also to import the plural and vice versa;

1.1.3 headings to clauses in this Agreement are for guidance only and shall not serve as a means of interpretation of any such clause.

1.2. The following words and expressions shall, unless inconsistent with the context, have the meanings assigned to them hereunder;

"Additional Rural Guidelines" means National Housing Policy supplementary to Volume 3 Part 5; of the Code, dealing specifically with the provision of Rural Subsidies on tribal land;

"Application" means the Application of the Municipality to the Department for the granting of rural subsidies in accordance with Volume 3 Part 5 of the Code, and National Housing Policy thereon, including all Annexures and appendices to that Application;

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"Appointed Professional" means a professional person appointed by the IA to carry out the duties assigned to such Appointed Professional in accordance with this Agreement;

"Beneficiaries" means a natural person who holds informal rights to the land within the Project Area and who qualifies for a project linked Rural Subsidy;

"CBP" means Community Based Partnership, which is a committee elected to represent the community in who is Area the project is being implemented;

"Code" means the National Housing Code of 2009, as approved and published by the Minister of National Department of Human Settlements in terms of section 4 of the National Housing Act, 1997 (Act 107 of 1997) as amended from time to time;

"Department" means the Provincial Department of Human Settlements of KwaZulu-Natal or its successor-in-title;

"Development Programme" means the Project plan as approved by the Department, containing Project Milestones and timeframes to be achieved in accordance with the provisions of this Agreement, attached hereto marked Annexure "C";

"District Municipality" means a category "C" district authority as defined in terms of Section 155 (1) (c) of the Constitution, 1996 (Act no 108 of 1996). In this case, the District Municipality is the Ugu District Municipality;

"Effective date" means the date of signature of the last person signing this Agreement;

"External services" means all primary water, sewerage, electricity and Storm water services as well as the road network to which internal services are to be linked;

"Housing Subsidy" means the housing subsidy scheme administered by the Department in accordance with the requirements of the National Department of Human Settlements;

"IA" means the Implementing Agent, and is the institution, or entity Appointed by the Municipality to assist with the implementation of the Project under the supervision of the Department. In this case, MGM Project Management (Pty) Ltd, a Company

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registered in terms of the Company laws of the Republic and registered as such on the central supplier's database;

"Internal services" means the services within the project area, to be provided by the Municipality, in accordance with the norms and standards;

"Municipality" means a category **"B"** local authority as defined in terms of Chapter 1, Part 1 of the Municipal Structures Act, 1998 (Act No 117 of 1998). In this case, it is Umdoni Local Municipality;

"MEC" means the Member of the Executive Council of the KwaZulu-Natal Provincial Government contemplated in section 132 of the Constitution (Act 108 of 1996), as amended, whose portfolio includes responsibility for the provision of housing;

"Milestone" means the achievement of certain activities in the construction of Top Structures as reflected in the Progress Payment Schedule with Rainwater harvesting tank and as contemplated in this Agreement;

"National Database" means the database maintained by the National Department of Human Settlements, which contains the names and identity numbers of persons who have previously received financial assistance from the Government of the Republic of South Africa in order to acquire residential property;

"National Housing Policy" means the policy of the National Department of Human Settlements with regard to the provision of subsidies and development of low-income housing projects;

"NHBRC" means the National Home Builders Registration Council was established in terms of section 2 of the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998);

"Personal Information" (PI) for the purposes of this agreement, personal information shall include but not limited to information contained in this agreement, information and documents relating to the Project stipulated in the agreement, all correspondence, reports, minutes and other communication that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence whether the information is recorded electronically or otherwise;

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"Progress payment" means payment, to be made to the IA as a phased payment in accordance with the provisions of 5.3.5 of Guideline on the Implementation of Projects as contemplated in the payment schedule marked Annexure **"D"**;

"Project" means construction works of 500 (Five Hundred) Top-Structures and the installation and construction of 500 (Five Hundred) Rain Water Harvesting tanks in accordance with the period indicated in the Development Programme marked Annexure **"C"** and any time frames as set out in this Agreement;

"POPIA" shall mean the Protection of Personal Information Act 4 of 2013 as amended from time to time;

"Residual" means any amount that remains after the spending on the subsidy amount the amount constituting the "P5 payment" in annexure **"D"**;

"Resolution" means the resolution of the Department setting out the terms and conditions upon which the application was approved;

"Social Commitment" means commitment between stakeholders to undertake a housing project in accordance with an agreed development vision;

"Stage 2" means all the construction works on the Project including the site hand-over;

"State" means the National, Provincial or Local Government, or an entity wholly owned by any of them, as the context may indicate;

"Subsidy" means a subsidy granted in terms of Volume 3 Part 5 of the Code for improved erf or serviced erf;

"Top Structure" means a single dwelling constructed on a single residential site which must comply with the minimum national norms and standards for the construction of stand-alone residential dwellings; and

"Top-structure product" means a Top-Structure as depicted in the drawing and technical specifications.

2. DOCUMENTS

- 2.1 The Agreement between the Parties in respect of the implementation of the Project is contained in the following documents:

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- 2.1.1 Housing Code. (Not attached in this document);
- 2.1.2 National Housing Policy (Not attached in this document);;
- 2.1.3 Additional Rural Guidelines (Not attached in this document);
- 2.1.4 This Agreement and the following annexures:

(a)	Copy of Main Agreement	Annexure A
(b)	Professional Indemnity Certificate	Annexure B
(c)	Development Programme	Annexure C
(d)	Progress Payment Schedule	Annexure D
(e)	Technical Specifications	Annexure E

- 2.2 The entire Agreement, including all the annexures attached thereto, is subject to the provisions of Volume 3 Part 3 of the Code, and the Additional Rural Guidelines. If there is any conflict between any provisions contained in the annexures and the provisions of Volume 3 Part 5 of the Code of 2009, shall prevail.

3. PROJECT FUNDING

- 3.1 The provisional Project funding as approved and allocated by the Department is an amount of **R 70 635 476.17 (Seventy Million, Six Hundred and Thirty Five Thousand, Four Hundred and Seventy Six Rand and Seventeen Cents Only)** for the implementation of the Project, as per Payment Schedule dated 19 November 2024 and which amount is made up as follows:
- 3.1.1 an amount of **R 57 552 366.00 (Fifty Seven Million, Five Hundred and Fifty Two Thousand, Three Hundred and Sixty Six Rand Only)** as a payment for House Construction, as per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.1.2 an amount of **R 343 258.22 (Three Hundred and Forty Three Thousand, Two Hundred and Fifty Eight Rand and Twenty Two Cents Only)** as a payment for the construction of 2(two) 45m² houses as per Payment Schedule dated 25 October 2023, attached hereto marked **Annexure "D"**;

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- 3.1.3 an amount of **R 2 150 294.45 (Two Million, One Hundred and Fifty Thousand, Two Hundred and Ninety Four Rand and Forty Five Cents Only)** as a payment for cost escalation at a rate of 4.3% per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.1.4 an amount of **R 456 077.55 (Four Hundred and Fifty Six Thousand, Seventy Seven Rand and Fifty Five Cents Only)** as a payment for cost escalation at a rate of 6.1% as per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.1.5 an amount of **R 480 011.20 (Four Hundred and Eighty Thousand, Eleven Rand and Twenty Cents Only)** as a payment for 2022 realignment as per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.1.6 an amount of **R 1 388 393.75 (One Million, Three Hundred and Eighty Eight Thousand, Three Hundred and Ninety Three Rand and Seventy Five Cents Only)** as a payment for 2023 realignment as per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.1.7 an amount of **R 8 265 075.00 (Eight Million, Two Hundred and Sixty Five Thousand, Seventy Five Rand Only)** as a payment for Water Harvesting and Variation Allowance as per Payment Schedule dated 19 November 2024, attached hereto marked **Annexure "D"**;
- 3.2 The funds will be paid to the IA in accordance with the Progress Payment Schedule and the terms and conditions of this Agreement.

4. COMMENCEMENT AND DURATION

This Agreement shall commence on the effective date and shall continue in force for a period of 04 (Four) months and shall be completed in accordance with the terms and conditions of this Agreement and the Development Programme attached hereto marked Annexure "C".

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5. RESPONSIBILITY OF MUNICIPALITY AND IA

5.1 Execution of the Project

5.1.1 The Municipality and IA shall with due diligence and care execute or cause to be executed the Project in accordance with:-

- (a) the terms and conditions of this Agreement;
- (b) the contents of the application, subject to the provisions of the resolution and any other amendments agreed upon between the Department, the Municipality and IA;
- (c) the National Housing Policy;
- (d) all Laws and regulations including but not limited to:-
 - (i) the National Building Regulations and Building Standards Act, 1997 (Act 103 of 1997) as amended; and
 - (ii) the Housing Consumer Protection Measures Act, 1998 (Act no 95 of 1998) as amended and Regulations thereto;
 - (iii) all environmental laws; and
 - (iv) By-Laws of the Local Municipality having jurisdiction.

5.1.2 The Municipality and the IA hereby warrant that all documentation and information contained in the application is true and correct in all material respects and that it contains all such relevant information required to enable the Department to make an informed decision on the Project in accordance with the provisions of the Code and the National Housing Policy.

5.2 Development Rights in Respect of the Area

5.2.1 The Municipality hereby warrants that it is entitled to develop the Area in the event that the State and/or Ingonyama Trust Board own the Area, the Municipality warrants that it holds a valid Development Rights Agreement.

5.2.2 The Municipality shall ensure that it complies at all times with the terms and conditions of the Development Rights Agreement.

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- 5.2.3 The Municipality undertakes to immediately notify the Department of any breach or anticipated breach of the landowners' contractual obligations in respect of the land availability in which event the valid cancellation of the Development Rights Agreement shall constitute a material breach of this Agreement, which shall entitle the Department to the remedies referred to in clause 11 below.

5.3 Compliance with the Development Programme

The Municipality shall manage and monitor the performance of the IA to ensure compliance with the terms of this Agreement to ensure that the IA adheres to the timeframes of the Development Programme in implementing the Project.

5.4 Submission and Consideration of Subsidy Applications

- 5.4.1 The Municipality shall submit to the Department a subsidy application form and with the supporting documentation for each beneficiary in the form and manner as prescribed in the Code, subject to any requirements laid down by the Department from time to time.
- 5.4.2 The Department shall upon receipt of duly completed Beneficiary application forms and supporting documentation process and approve or reject the applications within 30 (thirty) days of receipt thereof.
- 5.4.3 In the event that the Department approves an applicant's subsidy application, the Department shall notify the Municipality thereof and shall record the name and identity number and marital status of the beneficiary and his or her spouse on the national database.
- 5.4.4 In the event that the Department rejects the applicant's subsidy application, the Department shall notify the Municipality thereof giving written reasons for the rejection.
- 5.4.5 The Municipality and the IA indemnifies the Department against any claims of whatsoever nature arising out of whatsoever cause by any party and offers to make good any expense or payment the Department is obliged or compelled to make.

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5.5 Erection of Public Notice Board

5.5.1 The IA shall, within 48 hours of site establishment, erect or cause to be erected, a public notice board clearly indicating the following information:

- (a) Name of Project
- (b) Brief description of the Project;
- (c) Name of the Funder; i.e. KZN: Department of Human Settlements;
- (d) Name of the Municipality; and
- (e) Name of the IA.


5.6 Implementation of Project

5.6.1 The Municipality and IA shall subject to clause 5.8 below procure the implementation of the Project, by performing the following responsibilities:

- (a) design the product in consultation with all Stakeholders;
- (b) investigate building systems and designs for the Top-Structures and Rain Water Harvesting Tanks that are acceptable with the community, and the Department;
- (c) prepare detailed Top Structure foundation designs, in accordance to the varying geotechnical conditions;
- (d) review and finalise the level of services vs. estimated costs consistent with National Housing Policy;
- (e) sustain and support the proper running of the CBP by providing advice and guidance where necessary;
- (f) in consultation with the CBP and Traditional Authority, replace any approved Beneficiaries who have left the Area and submit to the Department any changes for verification or approval;
- (g) network with support organizations so as to promote capacity building and to ensure the sustainability of the Project;

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- (h) assist with implementation of Social Compact Agreements between the CBP and other stakeholders contributing directly or indirectly to the development process;
- (i) ensure the implementation of a Service Agreement with the District Municipality as may be required;
- (j) construct the Top Structures and Rain Water Harvesting Tanks in accordance with the drawings and specifications within the period of the Agreement;
- (k) promote the use of labour and the development of contractual skills by networking with accredited training organisations together with the Department of Labour and include them in the housing delivery process whenever possible;
- (l) assist to ensure sound accounting practices are adhered to;
- (m) programme and plan the Project;
- (n) attend to the Functional Tenure (Certificates to Occupy) in consultation with the Traditional Council;
- (o) meet all its financial commitments to consultants, contractors and other service providers engaged with the Development Project;
- (p) install any Internal Services as may be required and agreed to in the Service Agreement and the Subsidy Agreement;
- (q) endeavour as far as practically possible to provide work opportunities for the Beneficiaries and people within the community and arrange that any professional Consultants, Contractor and Sub-Contractors appointed by it shall do likewise;
- (r) prepare an "as built" Settlement Plan of the Top Structures and Rain Water Harvesting Tanks with associated lists of Beneficiaries, house numbers and GPS reference points on completion of the Project and forward one copy thereof to the Department and another copy to the Municipality;


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- (s) provide a reconciliation of the subsidies paid, approved Beneficiaries and Top Structures and Rain Water Harvesting Tanks constructed on completion of the Agreement.
- (t) The IA shall endeavour as far as practically possible to provide work opportunities for the unemployed beneficiaries and people in the community and arrange with any professional consultants and sub-contractor approved by it shall do like wise
- (u) The IA shall ensure that professional consultants and sub-contractors appointed by them employ 30% women and 10% youth as workers
- (v) The IA shall comply with 100% EPWP reporting by providing the Department with details of such workers/employees.

5.7 Construction of Top-Structures and Rain Water Harvesting Tanks

5.7.1 In implementing the Project:-

- (a) the IA and Municipality shall not commence with the construction of any residential units/Top Structures and Rain water Harvesting Tanks until the necessary plan approvals have been obtained and copies thereof delivered to the Department;
- (b) any residual shall be applied to the provision of Top-Structure; and
- (c) the construction of the Top Structures and Rain water Harvesting Tanks shall meet the technical specifications;

5.7.2 The IA and Municipality shall not be entitled to vary from the technical specifications without the prior written approval of the Department, which approval shall not be unreasonably withheld.

5.7.3 In the event that the IA subcontracts with a contractor with regard to the provision of the Top-Structures, the IA shall remain liable to the Department for the fulfillment of its obligations in terms of this Agreement.

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5.8 Appointment of Service Providers

The IA warrants that the Professionals have already been appointed in terms of their Supply Chain Management Prescripts. In the event that any other professional is to be appointed, the IA undertakes to make such appointment in accordance with the process and procedure that is fair and transparent and in terms of relevant Supply Chain Management Prescripts.

5.9 Processing of Claims

The IA shall prepare all claims for Progress Payment and submit it to the Department for certification and verification and the Municipality shall submit to the Department for verification and processing of the payments to be made to the IA.

5.10 Performance of the Municipality and IA

5.10.1 The Parties to this Agreement acknowledge that time is of essence for the implementation of this Project and therefore adherence to the revised Development Programme is a material term of this Agreement and the IA and the Municipality hereby undertakes to:

- (a) commence and complete the Project within the periods as contemplated in the Development Programme; and
- (b) meet any interim periods provided for in the revised Development Programme.

5.10.2 With effect from the effective date and until completion of the Project, the Department shall be entitled to:

- (a) request any information from the IA and the Municipality pertaining to the Project;
- (b) inspect the Project and any records or documentation pertaining thereto; or
- (c) call meetings which the IA and the Municipality shall be obliged to attend in order to deal with any queries of the Department pertaining to the Project.

5.10.3 In the event that the IA and the Municipality are unable to comply with the timeframe as contemplated in the revised Development Programme or any time provided for therein, then:-

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- (a) Within 30 (thirty) days from the date upon which the Municipality or the IA become aware of the potential delay, shall notify the Department of its intention to apply for an extension of the time or date of completion, failing which the Department will not consider such application;
 - (b) The Municipality and the IA must apply in writing within 30 (thirty) days of the cause of delay ceasing to the Department for its approval of an extension of time, giving full details of the cause of the failure to comply with the time set out in revised Development Programme and the extension required, failing which the Municipality and the IA shall forfeit the right of an extension of time. The Municipality and the IA must provide a detailed recovery plan, acceptable to the Department detailing steps to be taken, to prevent and mitigate future occurrences of such delays.
 - (c) Upon receipt of such written application, the Department may in writing extend the period as contemplated in the revised Development Programme or any time therein by a period to be determined by the Department, or may refuse to grant the extension.
- 5.10.4 Such approval shall not be unreasonably withheld; provided that clause 5.10.3 above has been complied with.
- 5.10.5 The written notification of approval by the Department of an amendment to the period in the revised Development Programme shall constitute a variation of this Agreement.
- 5.10.6 Should the Municipality and the IA fail to apply in writing for an extension of the period in the revised Development Programme or any time period provided therein within 30 (thirty) days or should the Department not grant an extension of time, the time as contemplated in the revised Development Programme shall not be exceeded nor the IA exonerated from liability to pay the penalty stipulated in clause 5.11 below.
- 5.10.7 Notwithstanding the provisions of this clause, if there is any dispute as to the Municipality and the IA's entitlement to an extension of time, any Party may refer the dispute for determination by arbitration in accordance with clause 17 below.
- 5.10.8 In such event, the arbitrator shall have the power to review the matter and grant or refuse an extension of time including in circumstances where the application for an extension of time was not made within the 30 (thirty) days, provided that in this latter

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regard he or she is satisfied that the Municipality and the IA have shown good cause for having failed to timeously apply for the extension of time concerned.

- 5.10.9 The Department and the Municipality shall have quarterly meetings to discuss progress on the Project and to resolve any challenges, which might be encountered by the IA during the implementation of the Project.

5.11 Penalty

If the IA fail to complete the Project within the time contemplated in the revised Development Programme or any time period or any extension thereof, the Department shall have the right without prejudice to any other rights available to the Department, to recover a penalty of **R0.40** (forty cents) per **R100.00** (One Hundred Rand) of the development milestone sum per day for each day on which the completion of the Project milestone may be in arrears as provided for in clause 5.10.1 above. Such penalty may be recovered or may be deducted as from the day following the date of completion stated in the revised Development Programme, or any extension thereof, from any payment due or to become due and payable under the revised Development Programme.

5.12 Utilization of Claims For Subsidies

Subsidies paid to the IA and the Municipality in terms of this Agreement must be applied to the Project and for no other purpose whatsoever. A contravention of this clause shall constitute a material breach of this Agreement and the Department shall be entitled to invoke the remedies set out in clause 11 below.

5.13 Professional Indemnity Insurance

- 5.13.1 The IA warrants that the professionals appointed by it are covered by professional indemnity insurance sufficient to cover any claims, which may arise specific to their services, attached hereto marked annexure "B".

- 5.13.2 The Appointed Professional team shall at all times during the term of this Agreement remain insured and keep a valid copy of such insurance which it may on request of the Department make such copy available.

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5.14 Reporting Procedure

- 5.14.1 The Municipality and the IA shall submit monthly written progress reports to the Department at the end of each consecutive month with effect from the Effective Date, which reports shall set out the status of the Project, whether the Municipality and the IA are adhering to the timeframes as contemplated in the revised Development Programme and the reasons for any delays might have been experienced.
- 5.14.2 In addition to the reports required in terms of clause 5.14.1 above, the Municipality and IA shall provide the Department with cash flow projections with each claim submitted.
- 5.14.3 Upon completion of the Project, the Municipality, the IA and the Department shall sign a completion certificate as proof of completion of the Project and submit same to the Department.

5.15 Protection of the Project

From the Effective Date until completion of each Milestone, the IA shall take full responsibility for care of the Project and all materials on site, which is intended for the incorporation of the Project. If any damage or physical loss shall occurs to the works or said materials, or any part thereof, from any cause whatsoever (other than "Accepted Risks") while the IA is responsible for the care thereof, the Municipality shall at its own cost repair and make good the same.

5.16 Accepted Risks

- 5.16.1 The "accepted risks" are risks of damage or physical loss or any other loss caused by or arising directly or indirectly as a result of or as a consequence of:
- (a) war, invasion, act of foreign enemies, hostilities or warlike operations (whether war be declared or not) or civil war;
 - (b) insurrection, rebellion or revolution;
 - (c) mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;

- (d) any event which, at the closing date of the tenders, is defined as a risk in terms of insurance offered by the South African Special Risks Insurance Association;
- (e) any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, as amended;
- (f) the impact of meteorites;
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- (h) ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuels;
- (i) the use of or occupation thereof by the Employer or its employees or agents or other contractors or beneficiaries (not employed by the Municipality) of any part of the Works;
- (j) the confiscation, commandeering, nationalization, requisition or destruction of or damage to property by an order of government, or any public or local authority; or
- (k) social unrest, political unrest or riots.

5.16.2 If the above accepted risks or situation arises the Municipality and IA shall notify the Department within 10 (ten) working days of such conditions.

5.17 Accounts

5.17.1 The Municipality shall cause proper books of account to be kept in accordance with generally accepted accounting principles.

5.17.2 At the termination of the Project, the Municipality shall prepare a reconciliation of the Project funding in accordance with the procedures laid down by the Department from time to time.

6 RESPONSIBILITIES OF THE DEPARTMENT

6.1 Payment

6.1.1 When the IA becomes entitled to a Progress Payment referred to in clause 3, the IA shall submit a tax invoice, and relevant supporting documentation to the Department

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for approval in respect of the Progress Payment together and required completion certificates.

- 6.1.2 The Department shall pay the amount due within 30 (thirty) days provided all documents required for payment are correctly completed.
- 6.1.3 The Department shall approve or reject, with valid reasons provided, all tax invoices within 7 (seven) days of receipt thereof.
- 6.1.4 In the event that the Department pays the IA an amount in excess of the amount to which the IA is entitled to, then the IA shall, within 30 (Thirty) days of receipt of a demand from the Department, refund any excess payment to the Department. Failure by the IA to repay such amount shall constitute a material breach of this Agreement.

6.2 Monitoring and Evaluation

- 6.2.1 The Department shall monitor and manage the performance of the Municipality and IA in order to ensure compliance with the terms of the Development Programme of this Agreement.
- 6.2.2 The Department's liaison person is the Director: Project Management: Ugu District or any person acting on his/her behalf.

6.3 Instructions

- 6.3.1 The Department may issue written instructions to the Municipality and IA regarding:
 - (a) alteration to design, quality or quantity of the Project provided that the instructions does not substantially change the scope of the Project and mutually agree in writing between the Parties;
 - (b) removal or re-execution of any work on the Project that is not according to the agreed specifications and standards.
 - (c) opening up of work for inspection, provided: that if the inspections, tests and analyses referred to show the works to be in accordance with the technical requirements, the cost of the inspections, tests and analyses shall be defrayed by the Department. Where the works do not comply with the technical

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requirements, irrespective of whether such supplies or services are accepted or not, the IA or the Municipality shall defray the cost in connection with these inspections, tests or analyses.

- (d) provision and testing of samples of materials and goods and assemblies of elements of the Project;
 - (e) Protection of the Project;
 - (f) making good physical loss and repairing damage to the Project in terms of clauses 5.15 above;
 - (g) compliance with laws, regulations, by-laws and National Housing Policy.
- 6.3.2 The Municipality and the IA shall comply with and duly execute all written instructions except any instruction for additional work issued after the date of practical completion other than making good physical loss and repairing damage and defects to Top-Structures and Rain Water Harvesting Tanks in the Project.
- 6.3.3 Should the Municipality and the IA fail to proceed with due diligence with a written instruction, the Department may notify the Municipality or the IA to proceed within 5 (five) working days from receipt of such notice.
- 6.3.4 Without further notice, on default by the Municipality or IA, the Department may appoint other parties to give effect to such instruction in addition to any other rights the Department may have. The Department may recover expenses and losses from the Municipality and the IA resulting from such appointment for losses and expenses suffered by the Department because of a default in terms of this Agreement.

7 DEFECTS LIABILITY

- 7.1 The IA shall be responsible at its own cost and for a period of 1 (one) year as calculated from the date of issue of the Appointed Professional's certificate in relation to the works concerned (the Defects Liability Period), to execute all such work of repair, reconstruction, verification and making good of defects, shrinkages, settlements and other faults, in the said works, as may be stipulated in writing by the Appointed Professional from time to time arising in the Top-Structures and Rain water Harvesting Tanks due either to defective workmanship or materials.

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- 7.2 Clause 7.1 above shall not derogate from the common law liability of the IA in respect of defects or faults in execution of the work or any materials, which only become apparent after the elapse of the Defects Liability Period.

8. LATENT DEFECTS LIABILITY PERIOD

The latent defects liability period for the Project shall commence at the start of the construction period and end one (1) year from the date of achievement of completion of each phase of the services installation and of each top structure.

9. ASSIGNMENT

Assignment or cession of any rights or obligations by the Municipality and IA are strictly prohibited, and shall under no circumstances be considered or approved by the Department.

10. VAT

The Municipality and the IA are complying with a ruling by the former Commissioner of Inland Revenue, that housing subsidies fall within the definition of "transfer payments" as contemplated in the Value Added Tax Act, 2000 (Act No. 10 of 2000) and that services rendered in terms of Housing Subsidy Scheme are zero-rated or value-added tax in accordance with Section 11(2)(s) of the Value-added Tax Act, (Act No. 89 of 1991) and therefore are subject to VAT at a rate of zero per cent (0%).

11. BREACH AND TERMINATION

- 11.1 In the event of any Party committing a breach of this Agreement and failing to remedy such breach within **14 (fourteen)** working days of the receipt of a written notice of such breach, the aggrieved Party shall be entitled to cancel this Agreement and claim damages without prejudice to any of its other rights in law.

- 11.2 This Agreement shall immediately terminate:

- 11.2.1 if the Parties agree thereto in writing;

- 11.2.2 should any default judgment in respect of any debt in any court of law be obtained against any Party in relation to this Project and without any reasonable explanation

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such judgment remain unsatisfied or is not rescinded for a period of **20 (twenty)** working days after notice of such judgment has come to the attention of judgment debtor; or if the Municipality is placed under business rescue or administration.

11.3 Where either Party cancels this Agreement in terms of 12 below the following shall apply:

11.3.1 the Department shall forthwith issue a written instruction specifying the continuation of work and protective measures required to bring the Project to specific points of cessation. The Municipality and the IA may cease work should the Municipality and the IA must be prevented from carrying out such instructions, due to reasons entirely beyond its control;

11.3.2 execution of the Project shall cease and the Municipality and the IA shall be responsible for the Project until possession is relinquished to the Department;

11.3.3 the Department shall be liable to the IA for the cost of materials and goods including those ordered before such cancellation where the Municipality is bound to accept and make payment. The IA shall deliver such materials and goods to the Municipality in good order;

11.3.4 the Municipality shall continue to certify the value of the work executed and the value of materials and goods for payment by the Department.

12 CESSATION OF THE PROJECT

The Department may by written notice instruct the Municipality and the IA to cease work on the Project for a period not exceeding 60 (Sixty) days, or intermittent period totaling 90 (Ninety) days, due to circumstances beyond the control of either Party. Where such Party considers cancelling this Agreement, notice shall be given to the other Party. Should the Party receiving the notice not object in writing within 10 (Ten) working days of the issue of such notice, the Agreement shall be deemed to be cancelled. Such cancellation shall be without prejudice to any rights that either Party may have in terms of law.

13. CONSENT TO JURISDICTION

Subject to the provisions of this clause, the Parties hereby consent to the jurisdiction of the Magistrate's Court, notwithstanding that the amount in dispute may exceed the

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jurisdiction of that court. However, if any dispute between the Parties relates to the interpretation of this Agreement or questions of non-fulfillment or specific enforcement of any condition in or arising out of this Agreement, then the Parties may refer the matter to the relevant High Court, which has jurisdiction over the Parties or the cause of action.

14. DOMICILIUM CITANDI ET EXECUTANDI

14.1 For the purpose of this agreement the parties choose their respective *domicilium citandi et executandi* as follows:

- | | |
|--------------------------|--|
| 14.1.1 the Department: | 203 Church Street
Old Mutual Building
Pietermaritzburg
3200 |
| 14.1.2 the Municipality: | Corner Bram Fischer & Williamson Street
Scottburgh
4180 |
| 14.1.3 the IA: | 07 Jenkins Street Margate
Margate
4240
Email: reception@mgmholdings.co.za |

14.2 Any written notice of change in *domicilium citandi et executandi* shall be delivered by hand or sent by prepaid registered certified post to the intended recipients.

14.3 Every notice to be given in terms of this Agreement shall be in writing and shall be:

14.3.1 delivered by hand to the *domicilium citandi et executandi* of the intended recipient in which event it shall be irrefutably presumed to have been served and the intended recipient to have been informed of the contents of such notice when such notice is so delivered; or

14.3.2 posted by prepaid registered or certified post to the *domicilium citandi et executandi* or the last known address of the intended recipient in which event it shall be presumed to have been served and the intended recipient to have been informed of the contents of such notice on the tenth (10) day, excluding Saturdays, Sundays and public holidays, unless the contrary is proved.

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- 14.4 Either party hereto shall be entitled to change its *domicilium citandi et executandi* from time to time provided that any new *domicilium* selected by it shall be situated in the Republic of South Africa and shall be an address other than a box number and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

15. VARIATIONS

- 15.1 No variation, modification, amendment, change or alteration of any provision of this Agreement, including this clause or consent to any departure there from shall in any way be of any force or effect unless confirmed in writing and signed by all of the Parties and such variation, modification, amendment, change, alteration or consent shall be effective only in the specific instance and for the purpose and to the extent for which it was made or given.
- 15.2 The Department reserves the right at any time and upon the granting of 2(two) months written notice to the IA and the Municipality to vary, amend or review the monthly cashflow projections and the Development Programme, subject to the Municipality and the IA agreeing in writing to the variation.
- 15.3 The Municipality and the IA hereby agree and undertake to keep the Department indemnified and to hold it harmless against all loss or damage from any cause arising which they may sustain as a result of the variation or amendment contemplated in paragraph 15.2 above.

16. WAIVER

- 16.1 The waiver by either Party of any breach of the terms or conditions of this Agreement by another Party shall not prejudice any remedy of the waiving Party in respect of any continuing or other breach of the terms and conditions thereof.
- 16.2 No favour, delay, relaxation, or indulgence on the part of any party in exercising any power or right conferred on each party in terms of this Agreement shall operate as a waiver of such power or right nor preclude any other or further exercises thereof or the exercise of any other power or right under this Agreement.
- 16.3 The expiry or termination of this Agreement shall not prejudice the rights of either Party in respect of any antecedent breach or non-performance by another party of

any of the terms or conditions hereof.

17 DISPUTE RESOLUTION

- 17.1 Should any dispute, disagreement or claim arise between the parties concerning this Agreement, the parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration.
- 17.2 A dispute within the meaning of this clause exists once one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- 17.3 Within 10(ten) days following such notification, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 17.4 Where the parties have failed to resolve the dispute by mediation, the parties must refer the dispute to the Arbitration Foundation of South Africa (AFSA) for resolution.
- 17.5 If such individuals are unable to reach agreement on the dispute during the arbitration proceedings, then the dispute shall be referred to the court of law having jurisdiction on the subject matter.

18 CONFIDENTIALITY

- 18.1 The parties acknowledge that for the purposes of this agreement, the parties may come into contact with or have access to PI and other information that may be classified or deemed as private or confidential and for which the other party is responsible. Such PI may also be deemed or considered as private and confidential as it relates to any third party who may be directly or indirectly associated with this agreement.
- 18.2 The parties agree that they will at all times comply with POPIA and its Regulations and Codes of Conduct and that it shall only collect, use and process PI it comes into contact with pursuant to this agreement in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their respective obligations in terms of this agreement.

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 MAM

- 18.3 The parties agree that it shall put in place, and at all times maintain, appropriate security measures to ensure the protection and confidentiality of PI that it, or its employees, its Service Providers or other authorised individuals comes into contact with pursuant to this agreement, whether or not they are still in the employ of the parties.
- 18.4 Unless so required by law, the parties agree that it shall not disclose any PI as defined in POPIA to any third party without the prior written consent of the other party, and notwithstanding anything to the contrary contained herein.
- 18.5 Any unlawful disclosure that damages or could damage a party shall be dealt with as a dispute in terms of the prevailing clauses of this agreement.

19 WARRANTY AND UNDERTAKING

The IA warrants that it shall at all times or during the occurrence of this Agreement possess the knowledge, suffice expertise, use and adopt reasonable professional techniques and standards and provide service with due care, skill and diligence.

20 WHOLE AGREEMENT

This Agreement, including all annexures and appendices thereto, constitutes the whole agreement between the Parties in relation to its subject matter and supersedes all prior agreements and no documentation, representation; warranty or agreement not contained herein shall be of any force and effect between the Parties.

21 AUTHORITY TO SIGN THIS AGREEMENT

By appending his/her signature hereto, each person doing so thereby warrants his/her authority to do so.

Thus done and signed at **DURBAN** on this _____ day of **NOVEMBER** 2024 in the presence of the undersigned witnesses.

AS WITNESSES

1. _____
2. _____

FOR AND ON BEHALF OF THE DEPARTMENT

FULL NAME OF SIGNATORY:

MR. MDUDUZI ORVILLE SIKHUMBUZO ZUNGU

DESIGNATION: HEAD OF DEPARTMENT

Thus done and signed at Scottburgh on this 11TH day of FEBRUARY 2024
in the presence of the undersigned witnesses.

AS WITNESSES

1. _____
2. _____

FOR AND ON BEHALF OF THE MUNICIPALITY

FULL NAME OF SIGNATORY: N.G. Kumalo

DESIGNATION: Acting Municipal Manager

Thus done and signed at MARGATE on this 13th day of FEBRUARY 2024
in the presence of the undersigned witnesses.

AS WITNESSES

1. x _____
2. x _____

FOR AND ON BEHALF OF THE IA

FULL NAME OF SIGNATORY: LOYISO GODLWANA

DESIGNATION: DIRECTOR