

**AGREEMENT FOR THE PROVISION OF
PRIVATE TELECOMMUNICATIONS
NETWORK AND RELATED CONNECTIVITY
SERVICES**

ENTERED INTO BETWEEN

BERGRIVIER MUNICIPALITY

AND

MUNICIPAL NETWORK SERVICES (PTY) LTD

Confidential
Service Provider Agreement
Bergrivier / MNS
June 2011

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Recital

Whereas Municipal Network Services (PTY) LTD is the reseller of services licensed by Trusc Technologies (PTY) LTD, the holder of an Individual Electronic Communications Network Service License and Electronic Communications Service License numbers 0231/IECNS/JAN/09 and 0231/IECS/JAN/09 respectively, issued by ICASA in terms of the Electronic Communications Act No 36 of 2005.

And whereas the Bergrivier Municipality has indicated its willingness to enter into an agreement with Municipal Network Services (PTY) LTD, which operates network infrastructure ("the network") within the area of the Municipality and which are suitable for the requirements of the Municipality, relating to the provision of broadband services to the Municipality and the municipal area over which it exercises authority:

And whereas the Bergrivier Municipality and Municipal Network Services (PTY) LTD have come to an agreement with regard to the provision of connectivity services to specified sites, and including assisting the Municipality to meet its social delivery commitments as outlined in this Agreement;

The parties agree that:

1. Definitions

CPE means Customer Premises Equipment

Service Level Agreement ("SLA") means clause 6 hereof setting out the quality of service obligations of Municipal Network Services in terms of this Agreement

Bergrivier Municipality ("the Municipality") means the local government entity established in terms of sections 12 and 14 of the Local Government: Municipal Structures Act No 117 of 1998 by Provincial Notice 483/2000 contained in the Province of Western Cape; Provincial Gazette 5589 of 22 September 2000.

Parties means the parties to this Agreement

This Agreement means this agreement together with all Annexures thereto.

The Service Provider – means Municipal Network Services (Pty) Ltd, a private company, registration number 2009/011895/07 with limited liability fully incorporated under the Companies and Close Corporations Acts of the Republic of South Africa (as amended), with its principal place of business at 3 Anmar Park, 2 Akasia Street, Vredendal, 8160.

VoIP means Voice over Internet Protocol.

Bandwidth means a private allocation of a data channel of a predetermined capacity reserved for use by one physical location.

Commencement date means the date upon which the agreement comes into effect namely the 1st of July 2011.

2. Term of Agreement

- 2.1. This Agreement will commence on the commencement date, notwithstanding the date of signature thereof.
- 2.2. Subject to the remainder of the clauses of this provision 2, this Agreement will remain in force for a period of three (3) years.
- 2.3. It is recorded that this Agreement is static as regards the specified services but that any change to such services as required by the Municipality or otherwise will have to be negotiated between the parties and reduced to writing.

3. Pricing

- 3.1. The Service Provider agrees to lease to the Municipality rights of use in respect of the network infrastructure necessary to meet the requirements of the Municipality at a fixed monthly cost.
- 3.2. The Municipality agrees to purchase from the Service Provider and take ownership of such Customer Premises Equipment (CPE) as may be required to meet the objectives of this Agreement at R 3900.00 per CPE.
- 3.3. All prices specified within this agreement are deemed to be exclusive of Value Added Tax.
- 3.4. The Municipality agrees to pay, on presentation of invoice by the Service Provider during any particular month throughout this Agreement, a monthly fee of the services at rates as detailed herein. Failure to make such payment may result in the disconnection of service to the municipality and a reconnection fee will be applicable:
- Service fee per 512Kb/s interoffice bandwidth per site – R 763.00.
 - Domain hosting fee – R 50.00
 - Website hosting fee – R 1800.00
 - Backup MX service for bergmun.org.za – R 800.00

4. Warranties

- 4.1. The Service Provider warrants that:
- 4.1.1. It is the holder of an ICASA type approval certificate for all radio equipment used.
 - 4.1.2. It is duly authorized to enter into this Agreement in its entirety.
- 4.2. The Municipality warrants that:
- 4.2.1. It is the owner and operator of all sites, other than schools, specified herein and of all public roads within its area of jurisdiction.
 - 4.2.2. It is duly authorized to enter into this Agreement in its entirety.
- 4.3. Both parties warrant that:

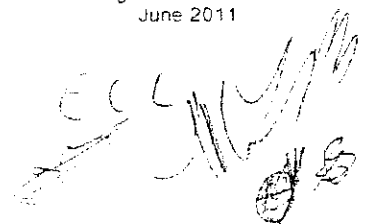
- 4.3.1. they will timeously undertake all procedures and make such applications as may be required by any change to legislation and regulation which may affect the respective licences of the parties or their ability to lawfully perform their obligations in terms of this Agreement.
- 4.3.2. they will in good faith enter into negotiations in respect of the amendment of this Agreement where such amendment is necessitated by any change in the regulatory environment or where such amendment would be mutually advantageous to the parties due to any change in the regulatory environment.
- 4.3.3. they will, in consultation with each other and on such further terms as may be agreed, take such steps as may be necessary to comply with any applicable legislation, including but not limited to the Regulation of Interception of Communications and Provision of Communication-related Information Act No 70 of 2002 and any legislation or regulation applicable to data privacy.

5. The Service Provider's obligations

- 5.1. The data connectivity requirements of the Municipality for inter-site connectivity are as set out in Annexure A hereto and the Service Provider will operate and maintain the network so as to meet these requirements subject to the service level provisions in this Agreement.
- 5.2. The Service Provider will, subject to the service level provisions in this Agreement, ensure that the network has the capacity to carry the following categories of data and services, limited only by the connection bandwidth as set out in Annexure A:
 - 5.2.1. inter-site and internal voice communications by means of VOIP protocols;
 - 5.2.2. data related to the municipal accounts system;
 - 5.2.3. data related to prepaid electricity vending systems;
 - 5.2.4. electronic documents and mail related to the internal operation of the municipality.
 - 5.2.5. such other services and categories as may be agreed upon in writing between the parties and subject to the adjustment of pricing.
- 5.3. The service provider will complete delivery of service to all offices specified in annexure A within 30 days of commencement of the contract.

6. Services and Service Levels Agreement

- 6.1. The Service Provider will
 - 6.1.1. provide uptime for the Network Backbone at a level of 99% over the term of the contract.
 - 6.1.2. provide and maintain a 24 hour Support Centre dedicated to the resolution of performance issues arising out of the execution of this Agreement according to the following timeframes:
 - 6.1.2.1.1. Less than 4 Hour ticket response times – Helpdesk attending.

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6.1.2.1.2. Less than 12 Hour ticket response times - Causes of problem established and technicians attending.

6.1.2.1.3. Less than 24 Hour Ticket response times – Problem resolution

6.2. The Municipality agrees and acknowledges that events beyond the control of the Service Provider may affect service levels under this Agreement and that the Service Provider cannot be held responsible therefore.

7. Commercial services

7.1. It is recorded that the Municipality has authorized the Service Provider to provide commercial services from sites owned by the Municipality and that the continued ability of the Service Provider to provide such services is an integral and material aspect of this Agreement and the Service Provider's continued ability to perform there under.

7.2. The Municipality accordingly agrees to take all reasonable steps to facilitate provision of the commercial services by the Service Provider.

8. Local economic development

8.1. The parties undertake to engage in negotiations aimed at exploring avenues for the Service Provider to assist the Municipality in the meeting of the latter's local economic objectives with particular regard to the provision of services to previously disadvantaged communities within the Municipal area and the empowerment of local communities through the provision of access to telecommunications.

9. Acceptable Use Policy

9.1. Use of the network as provided in terms of this Agreement will be subject to the Service Provider's Acceptable Use Policy, as posted on the Service Provider's web site and expressly incorporated herein.

9.2. The Municipality undertakes to implement an Acceptable Use Policy binding on its employees, independent contractors and other users of its information systems and to take all such reasonable steps as may be required to enforce it.

9.3. In the event that there is any conflict between the provisions of this Agreement and those of the Acceptable Use Policy then the provisions of the former shall take precedence.

9.4. The Municipality undertakes to ensure that all workstations are protected by reputable anti-virus software.

9.5. The municipality undertakes to ensure that its users do not:

9.5.1. utilize the network for any other purpose than that of municipal business.

9.5.2. switch off or disable the anti-virus protection installed by the municipalities IT personnel.

10. Municipality's obligations

- 10.1. The Municipality undertakes to provide, free of any rental or other charges whatsoever, space on and access to Municipal sites for the installation, maintenance and repair of radio equipment whenever this is required by the Service Provider to allow it to provide the services.
- 10.2. Such municipal sites include, but are not necessarily limited to:
- 10.2.1. Municipal High sites (water reservoirs and radio masts)
 - 10.2.2. Clinics, Libraries and Municipal offices
 - 10.2.3. Informal settlement Municipal sites
- 10.3. The Municipality acknowledges that the Service Provider will, during the course of this Agreement, identify further Municipal Installation Sites and Municipal High Sites, use of which will be necessary for the provision of services in terms of this Agreement. The Municipality, subject to completion of any required public consultation or environmental impact assessment process, hereby irrevocably consents to allow access as laid out in this Agreement to such sites on receipt of written request to do so.
- 10.4. The Municipality undertakes to ensure and pay for the electricity supply to sites where it is required for the utilization of installed radio equipment unless the nearest electricity supply point is situated more than 250 meters away from the site in which case the parties shall come to a reasonable agreement by way of negotiation.
- 10.4.1. The Municipality undertakes to allow the Service Provider and its representative access to all Municipal High Sites, Municipal Installation Sites and any other area or point which is strategically important for the continued operation and maintenance of the network. The Service Provider agrees to observe all reasonable precautions in safeguarding such access keys and to provide the Municipality with duplicates where access upgrades are implemented.
- 10.5. The Municipality undertakes to ensure that the provision of services in terms of this Agreement will be strictly limited to provision and use within the jurisdiction and boundaries of the Municipality.
- 10.6. The Municipality further undertakes to provide such access and facilities and to do such acts or refrain from doing such acts so as to fully support the Service Provider in the achievement of its community project delivery commitments under this Agreement.
- 10.7. The Municipality undertakes to maintain a reasonable level of security at specified sites at which equipment is installed in terms of this Agreement.
- 10.7.1. Such reasonable level of security will be appropriate in the circumstances and will include, but not be limited to, maintenance of fencing, gates, locks and doors:

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- 10.7.2. In the event of the Service Provider reporting a maintenance request regarding the security of a site the Municipality will be required to remedy such request with 48 hours of receipt thereof where this is reasonably possible in the circumstances.
- 10.7.3. Where a security maintenance request is not remedied aforesaid the Service Provider will be entitled to engage the service of a third-party contractor to attend to the request and all costs and expenses incurred in doing so will be for the immediate account of the Municipality.
- 10.8. The Municipality acknowledges that it is responsible for the proper operation of CPE installed on its premises and that the Service Provider may not be held liable in respect of any network downtime or loss howsoever occasioned which results from a failure to so properly operate the CPE.
- 10.9. The municipality agrees to perform all support requests by means of an email sent to support@trusc.net upon which the support service will reply with a confirmation email and reference number. Should such a confirmation not be received within thirty minutes the email is to be deemed undelivered and a telephonic support request should be made to 027-2133878. A verbal reference number should then be requested.
- 10.10. The Municipality undertakes to provide, free of any rental or other charges whatsoever, space in the Server room in Piketberg in order for the service provider to install a local POP (point of presence). Reasonable access must be afforded to the service provider.
- 10.11. The municipality agrees that failure to abide by the terms of 9.4 can lead to the service provider limiting access by the offending user or when the offending user cannot be determined, disable access to the local office from which the offending users traffic is originating.

11. Breach

- 11.1. If either party commits a breach of any provision of this agreement and, notwithstanding receipt of a written notice providing for a reasonable time within which to desist from committing such breach, remains in breach, then:
- 11.1.1. the aggrieved party shall, without prejudice to any of its rights either at law or in terms of any other provision of this agreement, be entitled to cancel this agreement by notice in writing to the other party and to claim damages or at its option to sue for specific performance.
- 11.1.2. if the breach shall not be capable of remedy, the aggrieved party shall not be entitled to cancel this agreement but shall be entitled to claim damages.
- 11.2. For the purpose of this agreement, all of the provisions shall be deemed to be material and a material breach by either party shall be deemed to have occurred on the occurrence of any of the following:
- 11.2.1. failure by either party to comply with all or any of the terms of this agreement;
- 11.2.2. if either party:

- 11.2.2.1. shall have committed an act of insolvency or shall make arrangement or assignment with or for the benefit of its creditors or shall call a meeting of its creditors; or
- 11.2.2.2. purports to or attempts to cede or assign any of its rights in terms of this agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld.

12. Indemnities

- 12.1. The Municipality indemnifies and holds the Service Provider harmless in respect of any claim or action of whatever nature and howsoever arising which may arise from third parties out of the implementation or continued operation of this Agreement.
- 12.2. The Service Provider hereby indemnifies and holds harmless the Municipality as against any claim or action arising from third parties out of any of the activities of the Service Provider in the implementation or continued operation of this Agreement.

13. Notices and domicilia

- 13.1. The parties choose their addresses where they will accept service of any notices/documents for all purposes arising from or pursuant to this agreement, as follows:

13.1.1. **the Municipality**

Address: 13 Church Street, Piketberg, 7320
Contact person: Mr Wessel Rheeder
Contact telephone number: (022) 913 1126
Contact fax number: (022) 913 1380
Contact e-mail address: rheederw@bergmun.org.za

13.1.2. **the Service Provider:**

Address: 3 Anmar Park, Akasia Street, Vredendal, 8160.
Contact person: Leon Botes
Contact telephone number: (027) 213 3878
Contact fax number: (086) 695 5578
Contact e-mail address: leon@trusc.net

- 13.2. Any party shall be entitled from time to time by written notice to the other(s), to vary its given address to any other address within the Republic of South Africa which is not a post office box.

- 13.3. All notices given in terms of this agreement shall be in writing and any notice given by any party to another ("the addressee") which:-

- 13.3.1. is delivered by hand or transmitted by telefax shall be deemed to have been received by the addressee on the first business day after the date of delivery or transmission, as the case may be; and if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 14th (fourteenth) day after the date of such posting.

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13.4. Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication received by one of the parties from another, including by way of telefax or e-mail transmission, shall be adequate written notice or communication to such party.

14. Entire Agreement

14.1. The parties expressly acknowledge that this Agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement shall be binding on the parties.

15. Variation and cancellation

15.1. No agreement varying, adding to, deleting from or canceling this Agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.

16. Indulgences

16.1. No indulgence granted by a party shall constitute a waiver of any of the party's rights under this agreement; accordingly, that party shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

17. Costs

17.1. The municipality shall bear the costs of the stamp duty applicable to this agreement.

18. Dispute resolution

18.1. in the event of a dispute arising between the parties out of the execution or interpretation of this Agreement, which cannot be settled by a genuine attempt at good faith negotiation, then either party to this Agreement shall be entitled to require, by written notice to the other party, that the dispute be submitted to arbitration in terms of this clause.

18.2. Subject to the provisions of this clause, an arbitration shall be held under provisions of the Arbitration Laws for the time being in force in the Republic of South Africa (as it is constituted from time to time), provided that:-

18.2.1. the arbitrator shall be, if the question in issue is:-

18.2.1.1. primarily an accounting matter, an independent person qualified for appointment as an accounting officer of a corporation under the act who has held that qualification for not less than 10 (ten) years;

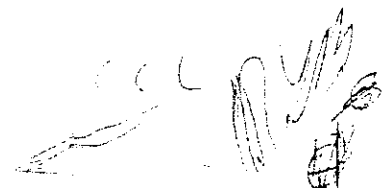
18.2.1.2. primarily a legal matter, a practising senior counsel or attorney of not less than 10 (ten) years' standing;

18.2.1.3. any other matter, an independent person;

- 18.2.1.4. agreed upon by the parties and, failing such agreement within 3 (three) days after the date on which the arbitration is demanded, shall be appointed by the President for the time being of the Law Society of the Western Cape, who may be requested by any party to the dispute to make that nomination at any time after the expiry of that three day period;
- 18.2.2. the arbitration shall be held in Cape Town in accordance with the formalities and/or procedures to be settled by the arbitrator, and may be held on an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery, or the strict rules of evidence.
- 18.2.3. the arbitrator shall be entitled:-
- 18.2.3.1. to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute;
- 18.2.3.2. to interview and question under oath any personnel of the parties to this Agreement;
- 18.2.3.3. to decide the dispute according to what he considers just and equitable in the circumstances;
- 18.2.3.4. to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise, as he, in his discretion, may deem fit and appropriate;
- 18.2.3.5. the arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within 30 (thirty) days after it has been so demanded
- 18.2.3.6. immediately after the arbitrator has been agreed upon or nominated in terms of this clause, any of the parties to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 18.2.4. Any award that may be made by the arbitrator:-
- 18.2.4.1. shall be final and binding;
- 18.2.4.2. may provide for costs;
- 18.2.4.3. will be carried into effect; and
- 18.2.4.4. may be made an order of any court to whose jurisdiction the parties to the dispute are subject.

19. Confidentiality

- 19.1. The parties undertake and agree to maintain confidentiality as regards the pricing and other sensitive terms of this Agreement and not to divulge these to another third party other than when required to do so by law.



20. Warranty of signatory

20.1. The person signing this agreement on behalf of the Municipality and the Service Provider respectively warrant that he or she is authorised to sign this agreement on behalf of the relevant party.

FOR THE MUNICIPALITY:

SIGNED AT Pikeberg THIS 24 DAY OF June 2011.

BY Elizabeth Christina Lieberberg (print name)

SIGNATURE EC Lieberberg

AS WITNESS [Signature] (A.W. Rhaeder) (signature & print name)

AS WITNESS [Signature] (signature & print name)

FOR THE SERVICE PROVIDER:

SIGNED AT PIKETBERG THIS 30th DAY OF JUNE 2011.

BY L. N. BOTAS (print name)

SIGNATURE [Signature]

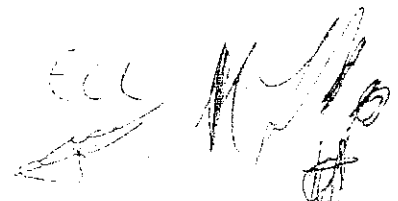
AS WITNESS [Signature] Henriette du Toit (signature & print name)

AS WITNESS [Signature] A. Botas (signature & print name)

Annexure A

Schedule of Services Required as at 1st July 2011

1. Interoffice connectivity:
 - 5Mb/s VPN at Municipal Offices in Piketberg
 - 0.5Mb/s VPN at LB Wernich Library in Piketberg
 - 2Mb/s VPN at Traffic Offices in Piketberg
 - 2Mb/s VPN at Municipal Offices in Porterville
 - 1Mb/s VPN at Traffic Offices in Porterville
 - 2Mb/s VPN at Municipal Offices in Veldrift
 - 0.5Mb/s VPN at Stywelyne Resort in Veldrift
 - 0.5Mb/s VPN at Noordhoek Library in Veldrift
 - 0.5Mb/s VPN at Dwarskersbos Resort in Dwarskersbos
 - 0.5Mb/s VPN at Municipal Offices in Aurora
 - 0.5Mb/s VPN at Municipal Offices in Redelinghuis
 - 0.5Mb/s VPN at Municipal Offices in Eendekuil
 - 0.5Mb/s VPN at Municipal Stores in Piketberg
2. DNS hosting of bergmun.org.za domain.
3. Website hosting of www.bergmun.org.za
4. Backup MX for bergmun.org.za domain.

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ANDREW WIUM CA (SA)

Registered Chartered Accountant SA

6 Maroela Street,

Tygerberg Hills, 7530

PO Box 6609, Welgemoed, 7538

andrew@eishtax.co.za

Cel no: 083 378 8185

021 913 1411 / 5209 (Office)

021 913 8615 (Fax)

9 August 2011

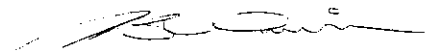
Bergriver Municipality

**Confirmation of Municipal Network Services Pty Ltd ("MNS") -
Reg 2009/011895/07 - background**

I, Andrew Wium CA (SA), hereby confirm that I have been appointed as the Auditor of MNS.
Furthermore, MNS is part of the Trusc Technologies Group and is fully supported and
authorized reseller of services provided on the Trusc Technologies network.
MNS was created specifically to deal with government institutions

Please contact me should any queries arise

Yours truly,



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AZ Wium CA (SA)

Registered with SACIA – No 03087802