



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

EED 10-2022/23

<b>TENDER DESCRIPTION:</b>	TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFFLOADING OF RING MAIN UNITS: THREE-YEAR PERIOD, AS AND WHEN REQUIRED
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**NAME OF BIDDER:** .....

**CSD NUMBER:** .....

**VENDOR NUMBER (WHERE APPLICABLE)** .....

Prepared by:  
City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria  
0002  
Tel: 012 358 9999

**BID CLOSING DATE**

**12 SEPTEMBER 2022**

Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**DEPARTMENT: ENERGY AND ELECTRICITY**

Bids are hereby invited from suppliers for the following bid:

<b>Bid number</b>	<b>Description</b>	<b>Department</b>	<b>Contact person</b>	<b>Compulsory briefing session</b>	<b>Closing date</b>
EED 10- 2022/23	Tender to appoint service providers for the supply, delivery and offloading of ring main units: three-year period, as and when required	Energy and Electricity Department	Neo L Bodiba ( <a href="mailto:neob@tshwane.gov.za">neob@tshwane.gov.za</a> or 012 358 0994)	N/A	12 September 2022 at 10:00am

The document is downloadable from the e-Tender portal and the City of Tshwane website ([www.tshwane.gov.za](http://www.tshwane.gov.za)).

**“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”**

**Each tender document shall be enclosed in a sealed envelope that bears the correct identification details and shall be placed in the tender box located at:**

City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria  
0002

Documents must be deposited in the bid box not later than **10:00 on [12 September 2022]** when bids will be opened in public.

**Bidders must contact the following officials for any enquiries:**

- Technical enquiries: Neo L Bodiba ([neob@tshwane.gov.za](mailto:neob@tshwane.gov.za) or 012 358 0994)

- Supply chain Management enquiries: Mulondi Nemaembeni ([mulondin@tshwane.gov.za](mailto:mulondin@tshwane.gov.za) or 012 358 6636)

**Bids will remain valid for a period of 90 days after the closing date.**

**Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.**

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## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

A bid that does not comply with the peremptory requirements stated hereunder will be regarded as not being an “acceptable bid”, and such a bid will be rejected. An “acceptable bid” means any bid which, in all respects, complies with the conditions of the bid and the specifications as set out in the bid documents, including the conditions as specified in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and related legislation as published in *Government Gazette 22549*, dated 10 August 2001, in terms of which provision is made for this policy.

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
  - (a) who is in the service of the state;
  - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - (c) who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.

Failure to comply with the above will lead to immediate disqualification.

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**Bidder**

**CERTIFICATE OF AUTHORITY FOR SIGNATORY**

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

**A. COMPANY**

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and to sign any contract resulting from this bid, and any other documents and correspondence in connection with this bid or contract on behalf of the company, must be submitted with this bid.

An example is shown below:

By resolution of the board of directors on ..... 20.....,  
Mr/Ms ..... has been duly  
authorised to sign all documents in connection with  
Bid Number .....

**SIGNED ON BEHALF OF THE COMPANY:** .....

**IN HIS/HER CAPACITY AS** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:** 1. ....

2. ....

**B. PARTNERSHIP**

The following particulars in respect of every partner must be furnished and signed by every partner:

<b>Full name of partner</b>	<b>Residential address</b>	<b>Signature</b>
.....	.....	.....
.....	.....	.....
.....	.....	.....

We, the undersigned partners in the business trading as ....., hereby authorise ..... to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid or contract on our behalf.

..... <b>Signature</b>	..... <b>Signature</b>	..... <b>Signature</b>
---------------------------	---------------------------	---------------------------

..... <b>Date</b>	..... <b>Date</b>	..... <b>Date</b>
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**C. ONE-PERSON BUSINESS**

I, the undersigned, ....., hereby confirm that I am the sole owner of the business trading as .....

..... <b>Signature</b>	..... <b>Date</b>
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**D. CLOSE CORPORATION**

In the case of a close corporation submitting a bid, a certified copy of the founding statement of such corporation shall be included with the bid with a resolution by its members, authorising a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company.

An example is shown below:

By resolution of the members at the meeting on ..... 20..... at .....  
....., Mr/Ms ....., whose signature appears below, has been duly authorised to sign all documents in connection with Bid Number .....

**SIGNED ON BEHALF OF THE CLOSE CORPORATION:** .....

**IN HIS/HER CAPACITY AS:** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:**     1. ....

                          2. ....

**E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES**

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this bid offer in joint venture and hereby authorise Mr/Ms ..... , authorised signatory of the company..... , acting in the capacity of the lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....

# **SPECIFICATION OR TERMS OF REFERENCE**

## **ENERGY AND ELECTRICITY DEPARTMENT**

**TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF RING MAIN UNITS AS AND WHEN REQUIRED OVER THREE (3) YEAR PERIOD.**

### **BID NUMBER**

**(EED 10-2022.23)**

## **1. INTRODUCTION AND PURPOSE**

The City of Tshwane invites bidders to tender for the supply, delivery and off-loading of ring main units as and when required over three (3) year period.

## **2. BACKGROUND**

The Energy and Electricity department is responsible for providing the Tshwane communities with service delivery in the form of energy and electricity. Electricity is delivered to the communities through the distribution network, ring main units are utilised in the distribution network to serve that purpose.

The Department needs to appoint service providers for the supply, deliver and off-loading of ring main units for the City of Tshwane as prescribed by SANS/ international standards, to the City of Tshwane operational depots/ stores as and when required for a three years period.

## **3. PROJECT SCOPE**

### **3.1. SCOPE**

The purpose of this tender is for appointment of service providers for the supply, delivery and off-loading of ring main units at the City of Tshwane's Supply Chain Management (SCM) stores, for the provision of 11kV electricity supply.

### **3.2. NORMATIVE REFERENCES AND ABBREVIATIONS**

3.2.1. Applicable National and International Standards

3.2.1.1. The latest revision of the standards below shall apply

SANS 1874	Switchgear - Metal-enclosed ring main units for rated a.c. voltages above 1 kV and up to and including 36 kV
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SANS 1885	Metal-clad switchgear for rated a.c. voltages above 1kV and including 36kV.
NRS 099	Bulk metering units for medium-voltage systems with a.c. voltages up to and including 24kV.
NRS 095	Pre-cast concrete plinths for cable connected Equipment

3.2.1.2. The bidders must indicate which standards their products have adopted

3.2.2. Abbreviations

A.C.: Alternating current

COT: City of Tshwane

CB: Circuit breaker

CT: Current transformer

D.C.: Direct current

IAC: Internal arc classification

IEC: International Electro-technical Commission

kV: Kilo Volts

LV: Low voltage

MV: Medium voltage

NRS: National Rationalised Standards

RMU: Ring main unit

SANS: South African National Standards

SCM: Supply Chain Management

SD: Switch disconnecter

VT: Voltage transformer

### **3.3. REQUIREMENTS**

3.3.1. RMUs are to be provided complete with a prefabricated out-door kiosk (and plinth), suitable for installation in locations with public accessibility.

3.3.2. The tender will be awarded per item

3.3.3. The following goods will be procured and delivered to the City of Tshwane store as per the official order

Item 1: Outdoor metering RMU (Required for supplies with bulk metering) for supplying transformer loads of up to 4 MVA

Item 2: Indoor metering RMU (Required for supplies with bulk metering) for supplying transformer loads of up to 4 MVA

Item 3: Outdoor non-metering RMU for supplying transformer loads of up to 500kVA

Item 4: Indoor non-metering RMU for supplying transformer loads of up to 500 kVA

Item 5: Indoor non-metering RMU for supplying transformer loads of up to 2 MVA

Item 6: Indoor combination 2-circuit breakers and 2-isolators

Item 7: Outdoor Three-way Switch

Item 8: Outdoor Four-way Switch.

Item 9: Combination Outdoor Circuit breaker and Three-way switch.

Item 10: Precast concrete plinth for the three-way RMU shall be in accordance with figure A.5. of NRS 095

Item 11: Precast concrete plinth for the four-way RMU shall be in accordance with figure A.6. of NRS 095

3.3.4. Summarized requirements have been stated in the Schedule A for the following equipment:

3.3.4.1. RMU (SANS 1874)

3.3.4.2. Kiosks (SANS 62271-202)

3.3.4.3. Protection and metering module (SANS 1874 and NRS 099)

3.3.4.4. Cable terminations: air-insulated enclosures (SANS 876)

3.3.4.5. Bulk metering units for medium-voltage systems (NRS 099:2012)

3.3.5. Service conditions: The requirements of SANS 1874 and schedule A apply.

3.3.6. Ratings The requirements of SANS 1874 and schedule A apply.

### 3.4. GENERAL

3.4.1. The requirements of SANS 1874, Schedule A and the following apply.

3.4.2. After the contract is awarded, a prototype RMU and kiosk shall be manufactured and approved by the City of Tshwane representative team before full scale production of RMU can commence.

3.4.3. Outdoor units are required complete with plinths. Plinths shall comply with the requirements of NRS 095.

3.4.4. Requirements for CTs and VTs are stated in Annex A, schedule A and B.

### 3.5. LAYOUT

3.5.1. The general arrangement of the RMUs and kiosks required comprise of the following:

3.5.1.1. Item 1 is an outdoor RMU required for MV metering of bulk electricity supplies of up to 4MVA. The RMU shall comprise of;

- i) MV RMU (SD, CB and SD) compartment,
- ii) MV metering compartment,
- iii) MV customer compartment,
- iv) Plinth – details as indicated in drawing C.1 and C.4 of NRS 099 (also refer NRS095: Drawing A.11 – Precast concrete plinth for RMU).

3.5.1.2. Item 2 is an indoor RMU required for MV metering of bulk electricity supplies of up to 4MVA. The RMU shall comprise of;

- i) MV RMU (SD, CB and SD) compartment,
- ii) MV metering compartment
- iii) MV customer compartment.

3.5.1.3. Item 3 is an outdoor non-metering RMU (SD, CB and SD), meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter), required for supplying distribution transformer loads of up to 500kVA. The unit shall be supplied with a concrete plinth.

3.5.1.4. Item 4 is an indoor non-metering RMU (SD, CB and SD), meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter), required for supplying distribution transformer loads of up to 500kVA.

3.5.1.5. Item 5 is an indoor non-metering RMU (SD, CB and SD), meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter). This unit is required to supply indoor transformer of up to 2 MVA.

3.5.1.6. Item 6 Indoor combination of 2-circuit breakers (1 CB for supplying 2 MVA transformer and 1 CB for supplying 4 MVA electricity meter for bulk electricity supplies) and 2-isolators.

3.5.1.7. Item 7 is a Three-way (T3) switch (SD, SD and SD). The unit shall be supplied with a concrete plinth

3.5.1.8. Item 8 is a Four-way (T4) switch (SD, SD, SD and SD). The unit shall be supplied with a concrete plinth

- 3.5.1.9. Item 9 is an outdoor combination switch non-metering RMU (SD, SD, SD and CB), meter cabinet (complete with indicating and thermal maximum demand ammeters), required for supplying transformer loads of up to 500kVA. The unit shall be supplied with a concrete plinth
- 3.5.1.10. Item 10 is a pre-cast concrete plinth, required for replacing damaged plinths on existing units. The plinth for the three-way RMU shall be in accordance with figure A.5. See Annexure B of the specification.
- 3.5.1.11. Item 11 is a pre-cast concrete plinth, required for replacing damaged plinths on existing units. The plinth for the four-way RMU shall be in accordance with figure A.6. See Annexure B of the specification.
- 3.5.2. Cable test facility: The requirements of Clause 4.3.5. in SANS 1874, schedule A and the following apply:
  - 3.5.2.1. Integral cable test facilities that are accessible from the front of the RMU and independent of the cable termination enclosure shall be provided for the SD and CB.
  - 3.5.2.2. Connection of cable test equipment: The requirements of SANS 1874 apply.
  - 3.5.2.3. Detail of the cable test facility offered shall be stated in Schedule B.
  - 3.5.2.4. Interlocking of cable test equipment: The requirements of SANS 1874 apply.
- 3.5.3. Switch disconnectors for rings: The requirements clause 4.4. of SANS 1874 and schedule A apply:
  - 3.5.3.1. Switch-fuse combinations are not required.
- 3.5.4. Transformer application
  - 3.5.4.1. The requirements of clause 4.5.2. in SANS 1874 and schedule A apply.
- 3.5.5. Circuit breakers for tee-offs
  - 3.5.5.1. General: The requirements of clause 4.6 in SANS 1874 and schedule A apply.
- 3.5.6. Protection
  - 3.5.6.1. The requirements of clause 4.6.2 in SANS 1874, schedule A and the following apply. Current sensor technology around the circuit-breaker type C bushing is acceptable.
- 3.5.7. Operation, the requirements of clause 4.6.3. in SANS 1874 and schedule A apply.
- 3.5.8. Bus bars, the requirements of clause 4.7. in SANS 1874 and schedule A apply.

- 3.5.9. Cable termination enclosures and terminations, the requirement of clause 4.8. in SANS 1874 shall apply
- 3.5.10. Barriers, the requirements of clause 4.3.14. in SANS 1874 apply.
- 3.5.11. Equipment: RMU, the requirements of SANS 1874 and schedule A apply.
- 3.5.12. Termination of incoming cables, the requirement of clause 4.8 in SANS 1874 shall apply;
  - 3.5.12.1. Clause 4.8.3.1.1 - The following connectors shall be supplied for all SDs and CB.
  - 3.5.12.2. Clause 4.3.4.6 - Type C bushings: A set of three unscreened separable connectors (USC) comprising of a cable plug with bolted contact must be supplied with each SD and CB.
- 3.5.13. Internal MV connections and terminations (Clause 4.8.6)
  - 3.5.13.1. Clause 4.8.6.1: Internal connections from the transformer to the RMU: Screened XLPE single core cables required.
  - 3.5.13.2. Clause 4.8.6.2: Transformer and RMU equipped with type C bushing: The type of termination required shall be type 4 where a XLPE cable is installed accordance with SANS 876.
- 3.5.14. Automation, the requirements of clause 4.9 in SANS 1874 shall apply. Automation shall not be applicable.
- 3.5.15. Earthing, the requirements of clause 4.11 of SANS 1874 and schedule A shall apply
- 3.5.16. Live circuit indication: The requirements of clause 4.12 of SANS 1874 and schedule A apply
- 3.5.17. Padlocking (SD and CB), the requirements of clause 4.3.7 of SANS 1874 apply
- 3.5.18. General interlocks, the requirements of clause 4.3.8 of SANS 1874 apply
- 3.5.19. Insulating and interrupting media, the requirements of Clause 4.3.10 of SANS 1874 apply. Detail of the interrupting media (SF6 or Vacuum) offered shall be stated in Schedule B
- 3.5.20. Partition class, the requirements of clause 4.3.13 of SANS 1874 apply
- 3.5.21. Internal arc classification (IAC), the requirements of clause 4.3.14 of SANS 1874 apply. i.e. (Indoor: AFL; Outdoor: A-B
- 3.5.22. Switch disconnectors for rings and tee-offs; the requirements of clause 4.4 - SANS 1874 and schedule A apply (SD current rating 630A)

- 3.5.23. Kiosks The requirements of clause 4.14 of SANS 1874, schedule A and the following apply.
- 3.5.23.1. Clause 4.14.4 alternatively, testing can be performed to SANS62271-202: Annex A, A.4.1.
  - 3.5.23.2. Clause 4.14.6 a lock protection facility shall be provided in accordance with figure C.5 of SANS1029
- 3.5.24. Raising base, the requirements of clause 4.15 of SANS 1874 and schedule A apply;
- 3.5.24.1. Clause 4.15.1 RMU raised base requirements: state in Schedule B.
  - 3.5.24.2. Clause 4.15.2 RMU gland plate requirements: state in Schedule B
  - 3.5.24.3. Clause 4.15.2 RMU height of raised base: state in Schedule B
- 3.5.25. Accessories: The requirements of clause 4.16 of SANS 1874, schedule A and the following apply.
- 3.5.25.1. The overall length and width of the metering RMU, shall be such that the RMU and enclosure fits properly on a type B MSS plinth as detailed in figure C.2 of SANS 1029:2004.
  - 3.5.25.2. The overall length and width of the non-metering RMU, shall be such that the RMU and enclosure fit on a 1920X1240mm plinth as per the requirement of NRS 095
- 3.5.26. The minimum height of the concrete plinth shall be 300mm.
- 3.5.27. Rating plates, the requirements of clause 4.17 of SANS 1874 and schedule A apply.
- 3.5.28. Marking and labelling, the requirements of clause 4.18 of SANS 1874 and schedule A apply
- 3.5.29. Other labels and signs: Clause 4.18.5 - Labelling of kiosks
- 3.5.29.1. A label depicting "Treatment and Full First Aid Instructions" shall be permanently attached to the inside of the kiosk compartment main access door.
  - 3.5.29.2. Painting on the side of the enclosure indicating, voltage rating, weight (kg) of the unit and SAP number.
  - 3.5.29.3. The letters MV must be displayed clearly and indelibly in red on the inside of the door of the kiosk.
  - 3.5.29.4. A label indicating procedure in case off fire and unauthorized handling of equipment
  - 3.5.29.5. External Chromadek electrical symbolic warning signs (WW7, Table 2 of SABS 1186 and mounted on a 190 mm x 190 mm square) with the words "No Unauthorized Entry Allowed" (in English, Afrikaans, Setswana and Zulu) shall be permanently attached to all the doors.
- 3.5.30. Protection and corrosion, the requirements of clause 4.18 of SANS 1874 and schedule A apply.
- 3.5.31. Packaging, transport, and delivery, the requirements of clause 6.6 of SANS 1874 and schedule A apply

### **3.6. TESTS**

- 3.6.1. General: The requirements of Clause 5 of SANS 1874 and schedule A apply.
- 3.6.2. Clause 5–2 - Type tests: The requirements of SANS 1874, schedule A and the following apply.
- 3.6.3. Clause 5.2.1- Type test certificates shall be submitted with the tender documents. Provide detail in Schedule B, the ILAC approved laboratory where the RMU was type tested, proof of accreditation and list of type test certificates
- 3.6.4. Clause 5–3 - Routine tests: The requirements of SANS 1874, schedule A and the following apply
- 3.6.5. Clause 5.3.1 Routine test certificates shall be provided with the RMU supplied
- 3.6.6. Original manufacturer’s test certificates/reports for bought-out (out-sourced) equipment shall be provided with the equipment supplied.
- 3.6.7. Clause 5.4 - Test on painted surfaces: The requirements of SANS 1874 and schedule A apply.
- 3.6.8. All pre-bidding testing will be for the account of the bidder.
- 3.6.9. The City of Tshwane reserves the right for its appointed work-group team to conduct a FAT (Factory Acceptance Test) of the first unit of all items before mass production or request in writing for the units to be delivered to the City of Tshwane’s premises for inspection and testing. Communication will be done in writing through SCM prior to the meeting**

### **3.7. RECOMMENDED SPARES**

- 3.7.1. The requirements of clause 7 of SANS 1874 and schedule A apply.

## **4. DOCUMENTATION**

- 4.1. Required documentation: The requirements of SANS 1874, schedule A and the following apply;
  - 4.1.1. Technical Schedule B and the Deviation Schedule shall be completed by the bidder
  - 4.1.2. Copies of type test certificates approved by a credited test institution shall be submitted with the tender

## **5. TRAINING**

- 5.1. The following manufacturer certified training courses shall be offered free of charge for the City of Tshwane employees:
  - 5.1.1. Safe and correct handling

- 5.1.2. Storage, transport, installation, termination and joints of the cables on units
- 5.1.3. Operation of the RMU and kiosk
- 5.1.4. Planned maintenance routine

5.2. A minimum of 10 personnel from each of the 12 operational depot shall be trained on the above listed requirements.

## 6. WARRANTY

Details of the warranty must be included in the tender documents, if not the City of Tshwane reserve the right to request such information within seven days of notification in writing.

The City of Tshwane requires a minimum of 12 months warranty of the goods.

## 7. DELIVERABLES

- (a) Delivery is required within 12 weeks from receipt of order. The ring main units are to be delivered at the City of Tshwane as per official order.
- (b) Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract under the delivery period.

## 8. STAGES OF EVALUATION

- Stage 1: Administration evaluation
- Stage 2: Local Content Production
- Stage 3: Mandatory requirements
- Stage 4: Preferential Point System

### 8.1. ADMINISTRATIVE COMPLIANCE

All the bids will be evaluated against the administrative responsiveness requirements as set out in the list of returnable documents.

### 8.2. LOCAL CONTENT PRODUCTION

The tenderers will be evaluated on the compliance of the minimum threshold for local production and content for the required goods.

Industry/ Sector/ Sub-sector	Local Content Threshold
Air insulated Medium Voltage Switchgear	50%
<ul style="list-style-type: none"> <li>• Instrument transformers</li> <li>• Busbar</li> <li>• Housing</li> <li>• Switching devices</li> </ul>	15% 5% 25% 5%

## **NOTE:**

Bidders should first complete Annexure D. After completing Annexure D, bidders should complete Annexure E and then consolidate the information on Annexure C. **Annexure C should be fully completed and signed and then submitted with the bid documentation at the closing date and time of the bid in order to substantiate the Annexure made in paragraph (c) below.** Annexures D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Annexures C, D and E with the actual values for the duration of the contract.

### **8.3. MANDATORY COMPLIANCE CRITERIA**

- 8.3.1. Copies of type test certificates or test reports in accordance with the SANS standards under Normative References from an accredited testing institution (SABS, IEC or any accredited international testing facility) of the product from the goods manufacturer.
- 8.3.2. Bidders will be evaluated based on the compliance of the following; (a) Annexure A – Returnable schedules A and B which must be completed in full with ink (black pen), bidders must not refer to brochures or any attached document. Failure to comply will result in the bidder being disqualified.

**NOTE: Bidders will be evaluated on the compliance of the form Annexure A; Returnable schedules A and B. Schedule B of this must be completed in full with ink (black pen) and the form must be signed underneath. Bidders must not refer to brochures or any attached documents. The information completed must comply to specification requirements. Failure to comply with these instructions will result in the bidder being disqualified.**

**The information provided by the bidders in schedule B of Annexure A shall be evaluated against the City of Tshwane minimum requirements in schedule A and the technical specification requirements.**

### **8.4. PREFERENTIAL POINT SYSTEM**

Preferential points to be used will be the 90/10 points system in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

- 90 points for price
- 10 points for B-BBEE status (service provider to submit the certified copy of the B-BBEE level rating certificate).

## **9. TYPE OF AGREEMENT REQUIRED**

The General Conditions of Contract applicable to this Contract shall be the document "GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT" issued by the National Treasury of the Republic of South Africa, read together with the Variations and Additions to the Conditions of Contract (Special Conditions of Contract) as well as the Data provided by the City of Tshwane.

## 10. VALIDITY PERIOD

The validity period for the tender after closure is 90 days.

## 11. PRICING SCHEDULE

### General

This section provides the tenderer with guidelines and requirements with regard to the completion of the Price Schedule. The Schedule has to be completed in black ink (black pen) and the tenderer is referred to the Tender Specifications in regard to the correction of errors.

The Price Schedule shall be read with all the documents which form part of this Contract.

The tender will be awarded per item

The following words shall have the meanings hereby assigned to them:

- Unit: The unit of measurement for each item of work in terms of the Specifications and the Project Specifications.
- Amount: The rate tendered for an item.

### 11.1 Rates

This price list has columns for rate and price for the goods. Entries in these columns are made as follows:

- If the Supplier is to be paid an amount for the goods which is the unit rate for each item multiplied by the estimated quantity of the item supplied, (i.e. a 'Price Schedule' arrangement) - the tendering supplier enters the rate which is then multiplied by the estimated quantity (which has been entered by the Purchaser) to produce the price which is also entered.
- The estimated quantities on the table below do not reflect the quantities that will be procured, they are only going to be used for the evaluation process.

## PRICE SCHEDULE

ITEM NO	DESCRIPTION	UNIT	ESTIMATED QUANTITIES	UNIT RATE (EXCLUSIVE OF VAT)	TOTAL (EXCLUSIVE OF VAT)
1	Outdoor metering RMU for supplying transformer loads of up to 4 MVA.	Each	50		
2	Indoor metering RMU for supplying transformer loads of up to 4 MVA.	Each	20		
3	Outdoor non-metering RMU for supplying transformer loads of up to 500 kVA.	Each	50		
4	Indoor non-metering RMU for supplying transformer loads of up to 500 kVA.	Each	20		
5	Indoor non-metering RMU for supplying transformer loads of up to 2 MVA.	Each	20		
6	Indoor combination 2-circuit breakers and 2-isolators	Each	30		
7	Outdoor Three-way Switch.	Each	40		
8	Outdoor Four-way Switch.	Each	40		
9	Combination Outdoor Circuit breaker and Three-way	Each	30		
10	Concrete plinth for the three-way RMU	Each	50		
11	Concrete plinth for the four-way RMU	Each	50		

## 12. MARKET ANALYSIS

The city of Tshwane reserves the right to conduct market analysis. Should the city exercise this option, Where a tenderer offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the tenderer if they will be able to deliver on the price, if a tenderer confirm that they cannot, The tenderer will be disqualified on the basis of being non-responsive. If they confirm that they can deliver, a tight contract to mitigate the risk of non-performance will be entered into with the service provider. Further action on failures by the supplier to deliver will be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.

The city further reserves the right to negotiate a market related price with a tenderer scoring the highest points. If the tenderer does not agree to a market-related price, the city reserves the right to negotiate a market-related price with the tenderer scoring the second highest points, if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points. If a market-related price is not agreed, the city reserves the right to cancel the tender.

### 13.ANNEXURE A: TECHNICAL SCHEDULE A & B

The clauses listed below refer to the sub clauses of specification SANS 1874 Schedule A: Purchaser's specific requirements

Schedule B: Particulars of equipment to be supplied (to be completed by bidder)

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

Clause 1874	Description	Schedule A	Schedule B
	RMU manufacturer	State	
	Make, model and catalogue number	State	
4.2.1	Rated voltage kV	12	12
4.3.1.5	Is an indoor or outdoor unit required	Outdoor	Outdoor
4.3.2	Extensible or non-extensible unit	Non-extensible	Non-extensible
4.3.3.3	Degree of protection of unit offered	STATE	
4.3.4	Required configuration item 1, 2, 3, 4, and 5; Item 6 Item 7 Item 8 Item 9	SD,CB,SD CB,CB,SD,SD SD,SD,SD SD,SD,SD,SD SD,SD,SD,CB	Required
4.3.5.1	Separate integral cable test facility required for SD	Required	Required
4.3.5.1	Separate integral cable test facility required for CD	Required	Required
4.3.5.4	Cable test facility offered shall be interlocked with associated earth switch and padlock.	Required	Required
4.3.10.2	Insulating medium of CB required	SF6/Vacuum	SF6/Vacuum
4.3.10.2	Specify interrupting medium of CB	State	
4.3.10.3	Insulating medium of SD required	SF6/ Vacuum	SF6/Vacuum
4.3.10.3	Specify interrupting medium of SD	State	
4.3.14.1	IAC classification of RMU and kiosk indoor and outdoor	State	



## Annexure A Continues

The clauses listed below refer to the sub clauses of specification SANS 1874 Schedule A: Purchaser's specific requirements

Schedule B: Particulars of equipment to be supplied (to be completed by bidder)

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

Clause 1874	Description	Schedule A	Schedule B
4.7.1	Busbar rating	630A	Required
4.7.5	Insulation medium of busbar	State	
4.8.2	Cable type  Maximum size(s)	PILCSWA /SANS 97 Belted Table 18.  70mm <sup>2</sup> copper	PILCSWA /SANS 97 Belted Table 18.  70mm <sup>2</sup> copper
4.8.3	Type of termination required (USC plug bolted connection)	SANS 876-type 3	SANS 876-type 3
4.10.6	Detail of SF6 recovery and replenishment	State	
4.11.1	Maximum earth fault current kA	10	10
4.12.1	Detail of voltage presence detection system (VPIS)	State	
4.14.1	Kiosk required	IAC A-B	IAC A-B
4.14.6	Padlock facility required on kiosk	Refer 4.14.6	Refer 4.14.6
4.15.1-3	Steel raised base, height and gland plate required	State	
4.16.4	Recommended tools	State	
4.17	Method of attaching rating plate	State	
4.18	Marking and labeling: method of attaching labels	State	
4.19.9	State type of material offered for the RMU kiosk etc	State	

<b>Clause 1874</b>	<b>Description</b>	<b>Schedule A</b>	<b>Schedule B</b>
5.1.3	Quantity already installed in South Africa	State	
5.2.1	State details of ILAC accrediting test facility and proof of certification	State	
5.2.3	Indoor RMU: IAC: comply with AFL SANS62271- 200	State	
5.2.4	Outdoor RMU: IAC: comply with SANS62271-202	State	
6.1	List of recommended spares	State	

## Annexure A continues

The clauses listed below refer to the sub clauses of specification SANS 1874 Schedule A:  
Purchaser's specific requirements

Schedule B: Particulars of equipment to be supplied (to be completed by bidder)

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

7.2(g)	Completed type tests with report numbers and relevant test standard numbers	State	
7.2(i)	Proof of test laboratory accreditation	State	
7.2(j)	Copy of RMU factory routine test.	required	required
7.2(l)	Copy of technical catalogue.	required	required
7.2(m)	Number of sets of installation operation and maintenance manuals required	Three sets.	Three sets.



4.8.14	Details of terminal block/rail mounted terminals offered for current transformers	State	
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**Annexure A continues**

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

Voltage transformer

<b>Clause</b>	<b>Description</b>	<b>Schedule A</b>	<b>Schedule B</b>
4.9.3	Information on voltage transformers required:		
	a) One or three-phase	3	3
	b) Ratio	11000/110	11000/110
	c) Class	0,5	0,5
	d) Burden VA	100	100
	e) Voltage factor (SANS/IEC 60044-2, Table 2)	1,9	1,9
	f) Location of test block	State	.....
	g) Fuse link current rating A	3.15	3.15
	h) Fuse link length mm	195	195
4.9.11	Required location of fuses, MCCB or links	State	
4.9.12	Are test blocks required	Yes	Yes
	If yes, type required	13 way	13 way
	Type of test blocks offered	State	
	Details of instruments offered	State	
	Details of transducers offered	State	
	Details of metering equipment offered	State	

## Annexure A continues

The clauses below refer to the relevant clauses of NRS 012 Cable terminations and live conductors within an insulated enclosure for rated a.c. voltages of 7.2kV and up to and 36kV

Schedule A: Purchaser's specific requirements

Schedule B: Particulars of equipment to be supplied (to be completed by bidder)

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

Sub-clause NRS 012	Description	Schedule A	Schedule B
4.2.2.2	Minimum specific crimpage distance.	20mm	20mm
4.2.3.5	Dimension of separable connector for type 3 termination using USC (see figure C.4).	Table 5 c:55 d:50	Table 5 c:55 d:50
4.3.1.1	Cable enclosure for termination in air and attached to:	RMU	RMU
4.3.1.2	Type of cable termination required	Type 3	Type 3
4.3.1.4©	Pollution condition	medium	medium
4.3.1.5a	Rated voltage <span style="float: right;">kV</span>	12	12
4.3.1.5b	Rated current <span style="float: right;">A</span>	630	630
4.3.1.5c	Number of poles	Three	Three
4.3.1.5d	Number of cable glands	one	one
4.3.1.5d	Size of cable glands	70/3c	70/3c
4.3.1.5d	Number of cables to be terminated	One	One
4.3.1.5d	The type of cable	PILCSWA	PILCSWA
4.3.1.5d	Size of cable	70/3c copper	70/3c copper
4.3.1.5e	System fault level: three-phase fault phase to earth-fault	13kA 10kA	13kA 10kA
4.3.1.5e	Maximum protection operating time	1s	1s
4.3.1.5f	Type of bushing or post insulator to be used	Type C	Type C
4.3.1.5g	Earthing method required	Earth terminal	Earth terminal
4.3.1.5h	The list of the lightning impulse voltage	List 2	List 2
4.3.1.9	Particulars of enclosures for ease of access	State	

<b>Sub-clause NRS 012</b>	<b>Description</b>	<b>Schedule A</b>	<b>Schedule B</b>
4.3.1.11	Cable support clamp required : polypropylene	fig C.11	fig C.11
4.3.1.11	Type of cable support clamp offered?	State	

## Annexure A continues

The clauses below refer to the relevant clauses of NRS 012:2009 Cable terminations and live conductors within an insulated enclosure for rated a.c. voltages of 7.2kV and up to and 36kV

Schedule A: Purchaser's specific requirements

Schedule B: Particulars of equipment to be supplied (to be completed by bidder)

**NOTE: Tenderer will not be considered unless this form is completed in full with black pen, signed and the contents comply with the specification requirements. Referencing to annexures, brochures or similar without completing this schedule in full will lead to disqualification.**

Sub-clause	Description	Schedule A	Schedule B
4.3.1.24	Current transformers to be mounted in the enclosure: item 3, 4 and 5.	1XLV CT white-phase	1XLV CT white-phase
4.3.1.24	Current transformer rated voltage <span style="float: right;">volt</span>	1000	1000
4.3.1.24	Dimensions of current transformer	LV ring CT	LV ring CT
4.3.2.5	Are bushings to be supplied by manufacturer	yes	yes
4.4.1	Rating plate required	required	required
5.1.2	Internal arc test required on air filled enclosure to SANS 62271-202	required	required
5.4	Tests on painted surfaces are required in accordance with SANS1874.	required	required

**ANNEXURE A continues**

**Deviation schedule**

Any deviations from this specification shall be listed below with reasons for deviation.

<b>Item</b>	<b>Clause</b>	<b>Proposed deviation</b>

## ANNEXURE B



### Item 1

Outdoor RMU required for MV metering of bulk electricity supplies of up to 4MVA

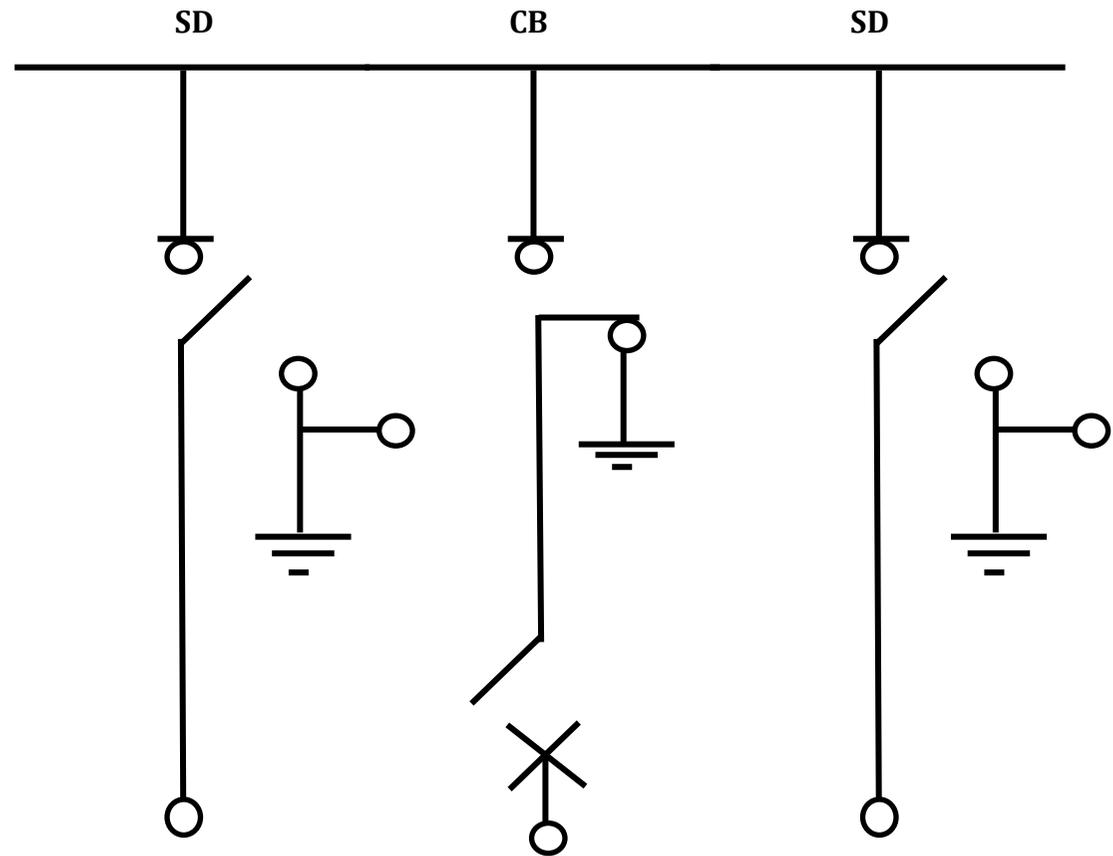
Switch Disconnecter (SD) rating 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF





Item 2

Indoor RMU required for MV metering of bulk electricity supplies of up to 4MVA

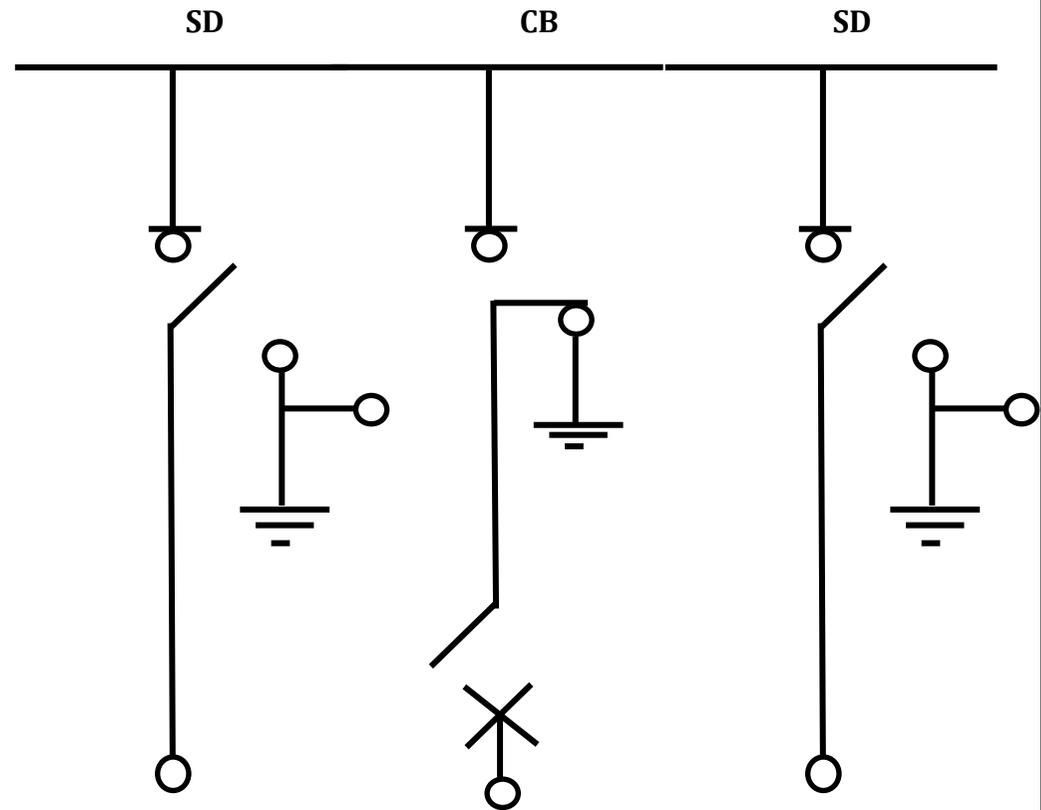
Switch Disconnecter (SD) rating 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF





Item 3

Outdoor non-metering RMU, meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter), required for supplying distribution transformer loads of up to 500kVA.

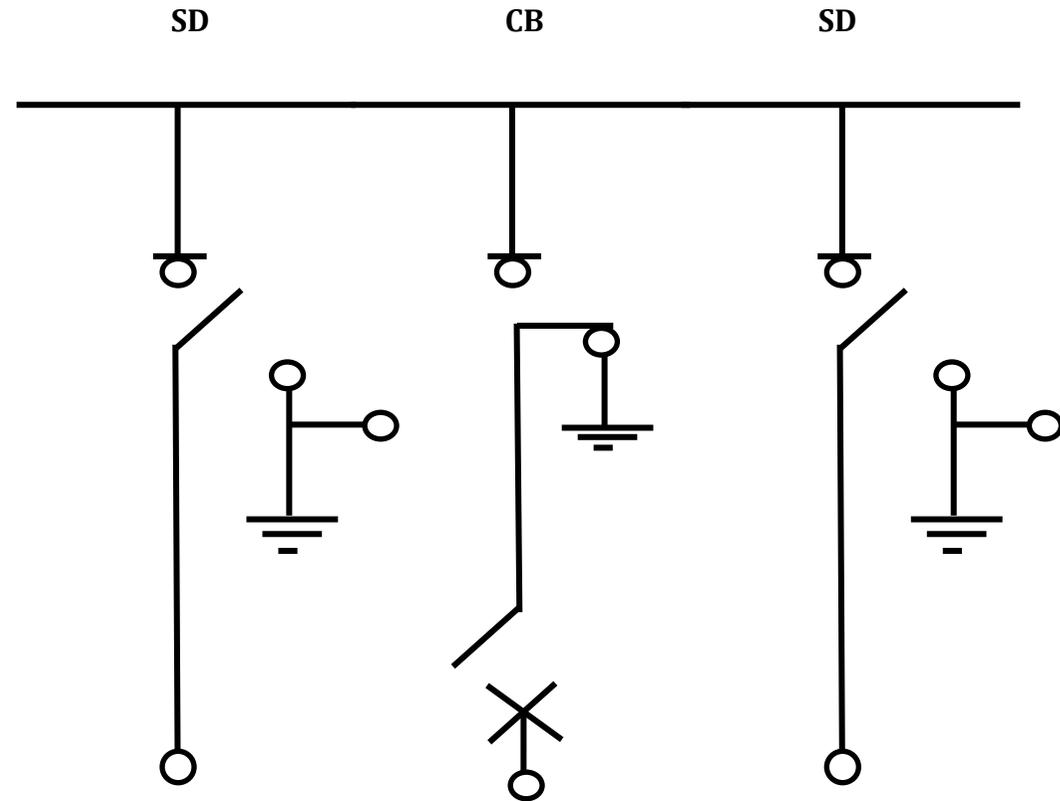
Switch Disconnecter (SD) rating: 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF





Item 4

Indoor non-metering RMU, meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter), required for supplying distribution transformer loads of up to 500kVA.

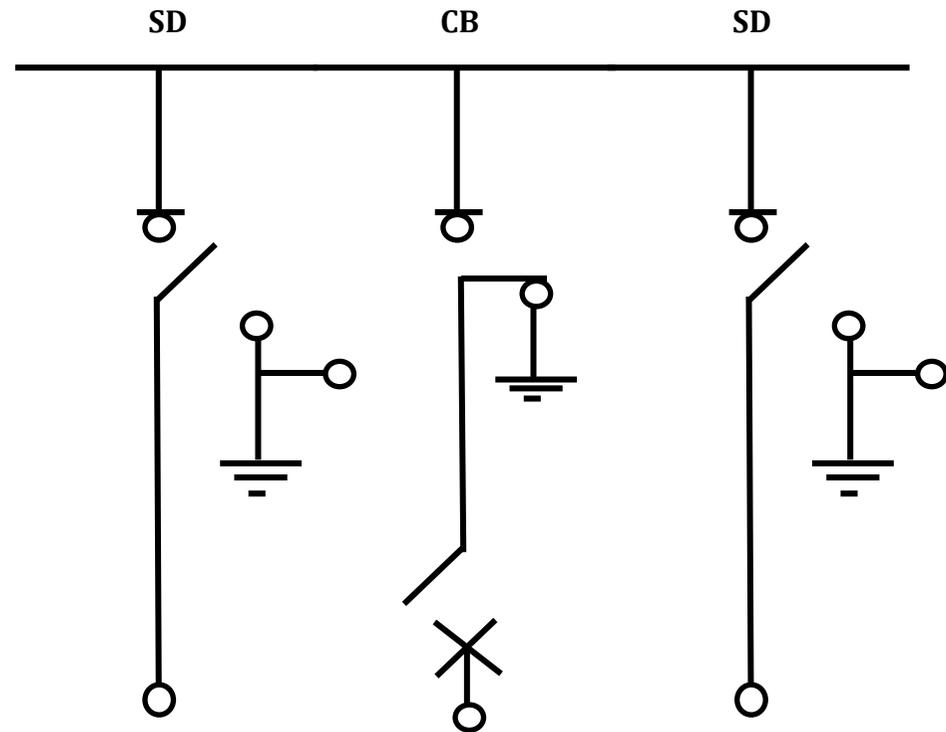
Switch Disconnecter (SD) rating: 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF





Item 5

Indoor non-metering RMU, meter cabinet (complete with white phase current metering facility, indicating and thermal maximum demand MDI ammeter). This unit is required to supply indoor transformer of up to 2 MVA.

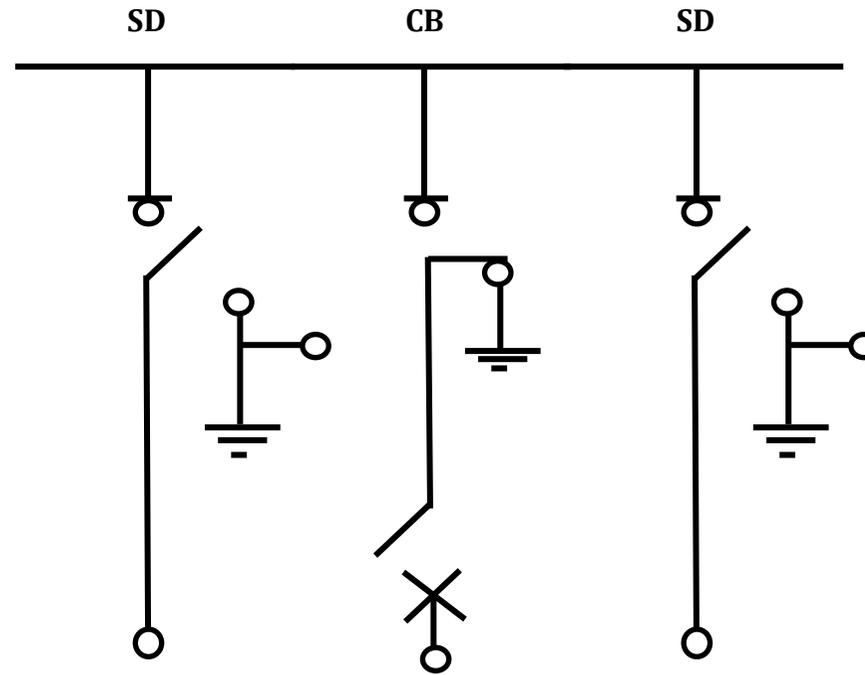
Switch Disconnecter (SD) rating: 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF





**Item 6**

Indoor combination of 2-circuit breakers (1 CB for supplying 2 MVA transformer and 1 CB for supplying 4 MVA electricity meter for bulk electricity supplies) and 2-isolators

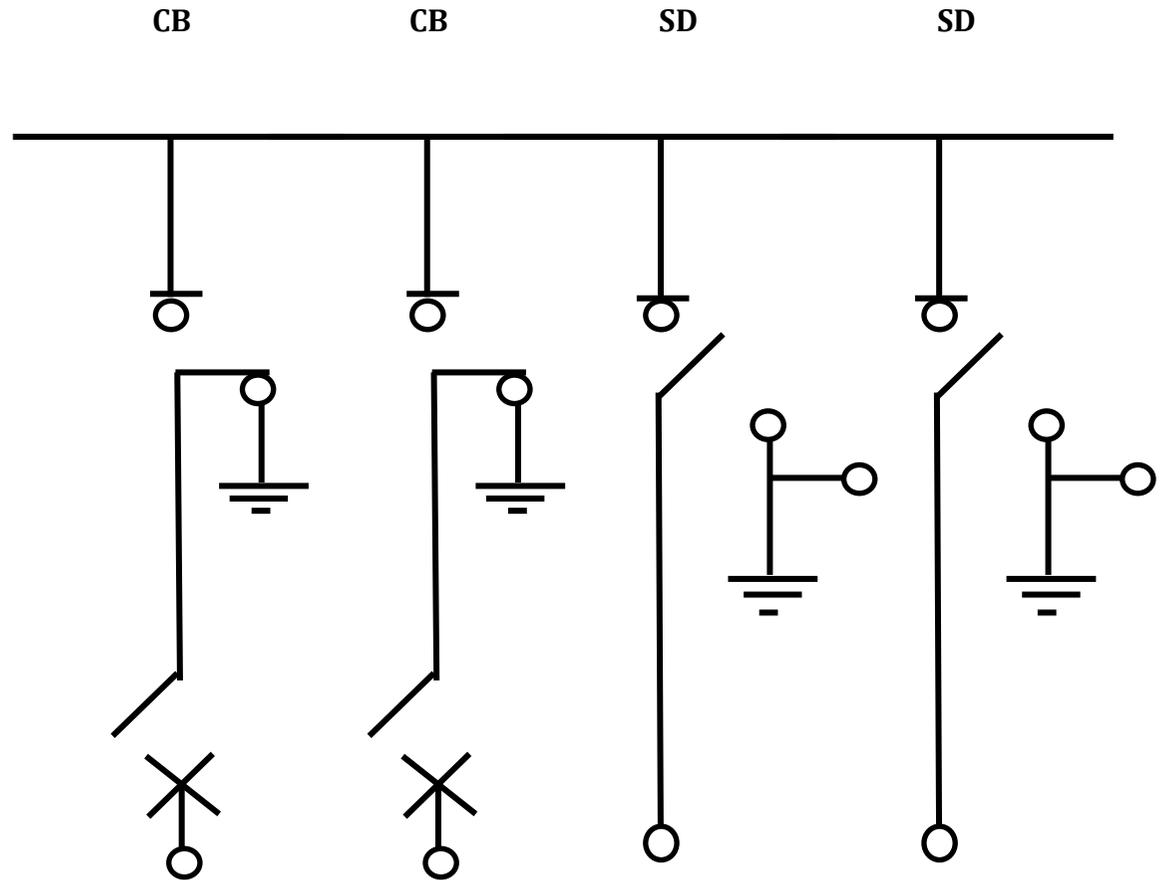
Switch Disconnector (SD) rating 630A

Circuit Breaker (CB) rating: 400A

CT: 10P10

VT: 11000/110 V

Protection: OC/EF



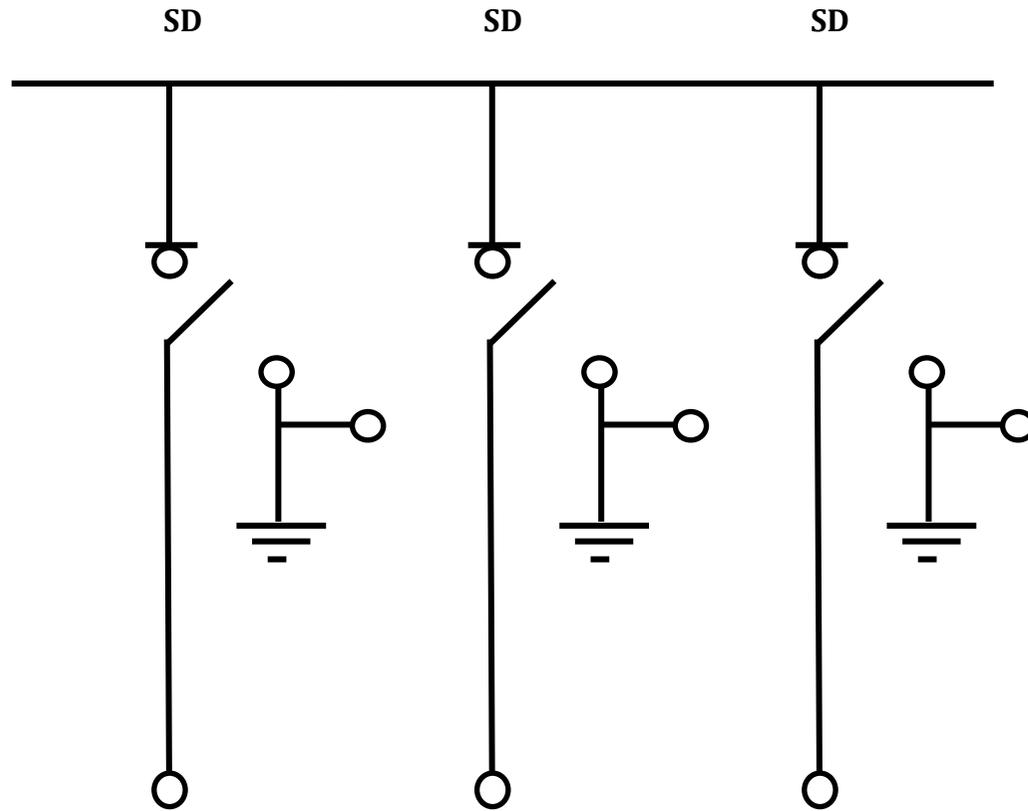


Item 7

Three-way (T3) switch

Switch Disconnecter (SD)

630A



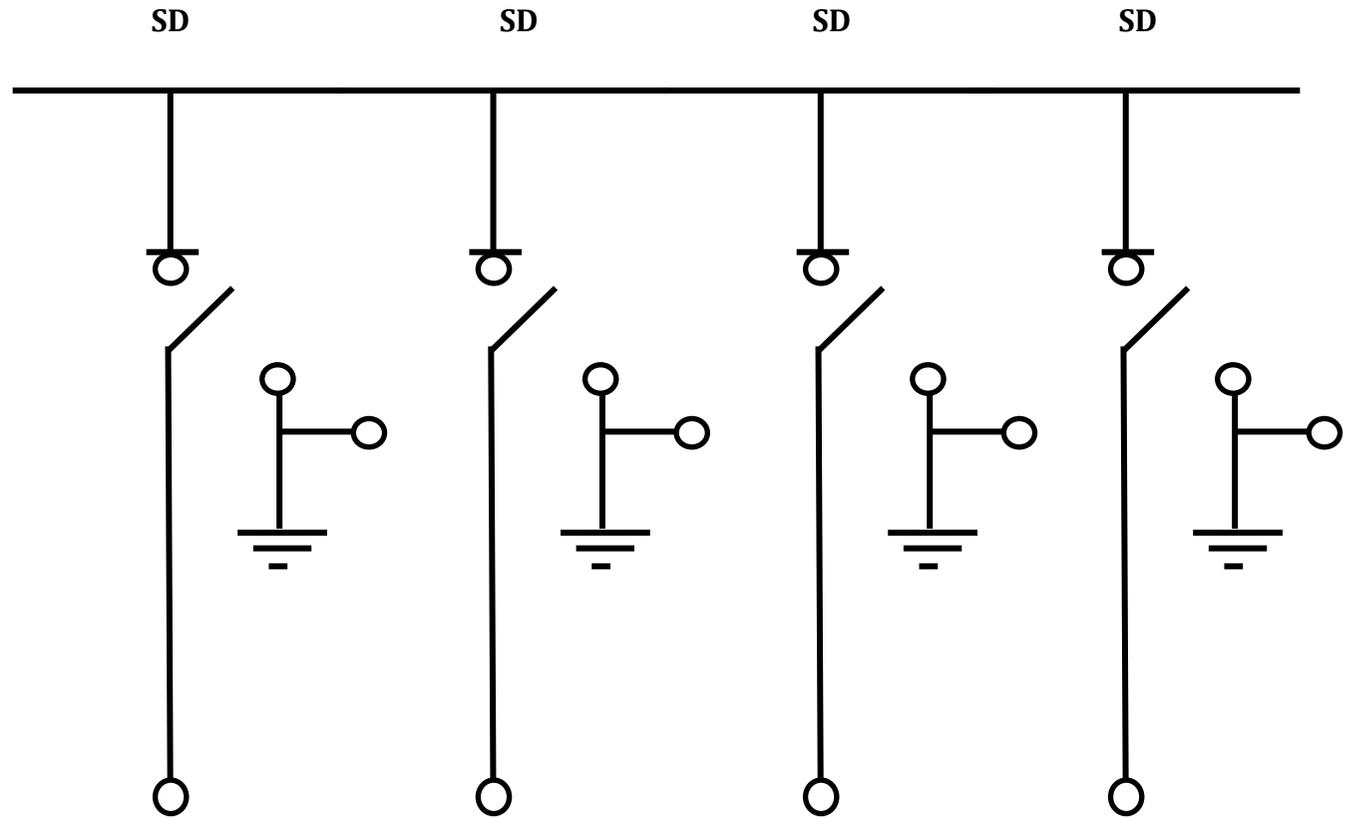


Item 8

Four-way (T4) switch

Switch Disconnecter (SD)

630A





Item 9

non-metering RMU (SD, SD, SD and CB), meter cabinet (complete with indicating and thermal maximum demand ammeters), required for supplying transformer loads of up to 500kVA.

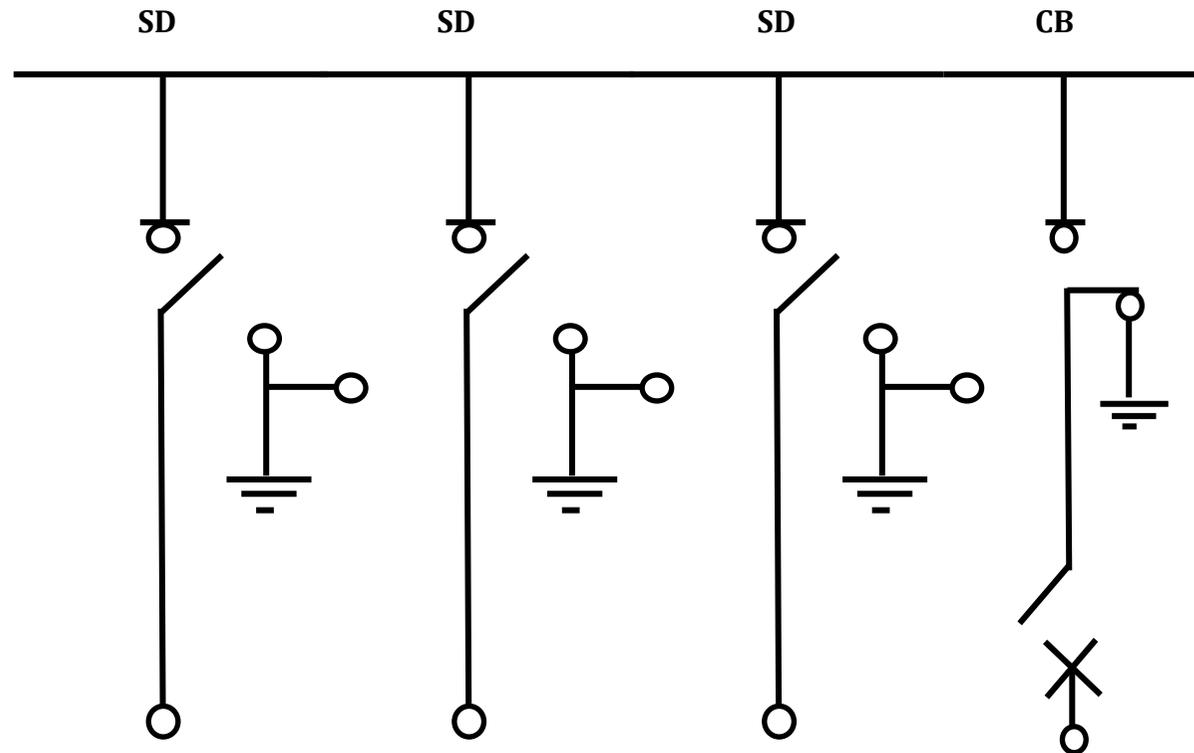
Switch Disconnector (SD) rating 630A

Circuit Breaker (CB) rating: 400A

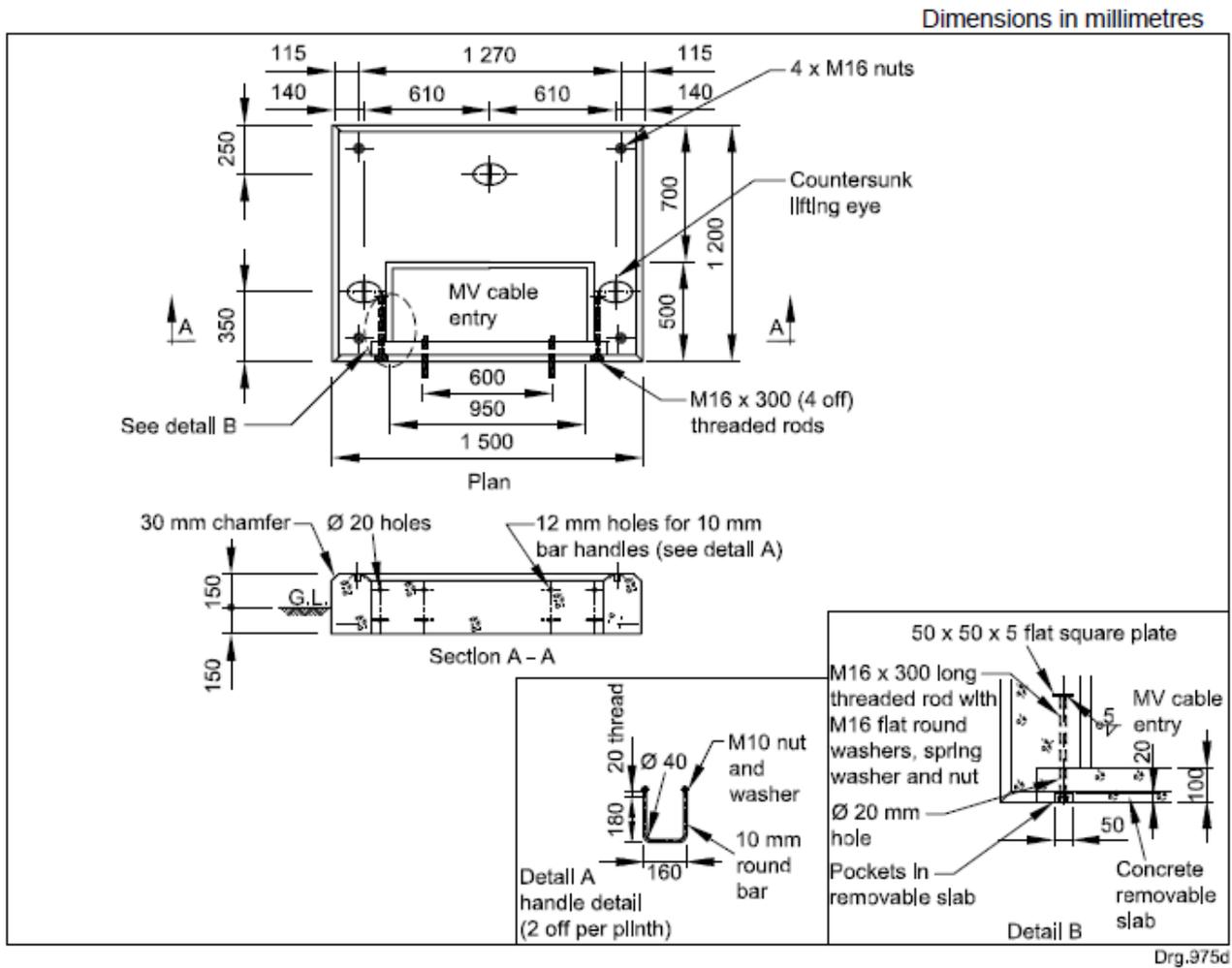
CT: 10P10

VT: 11000/110 V

Protection: OC/EF

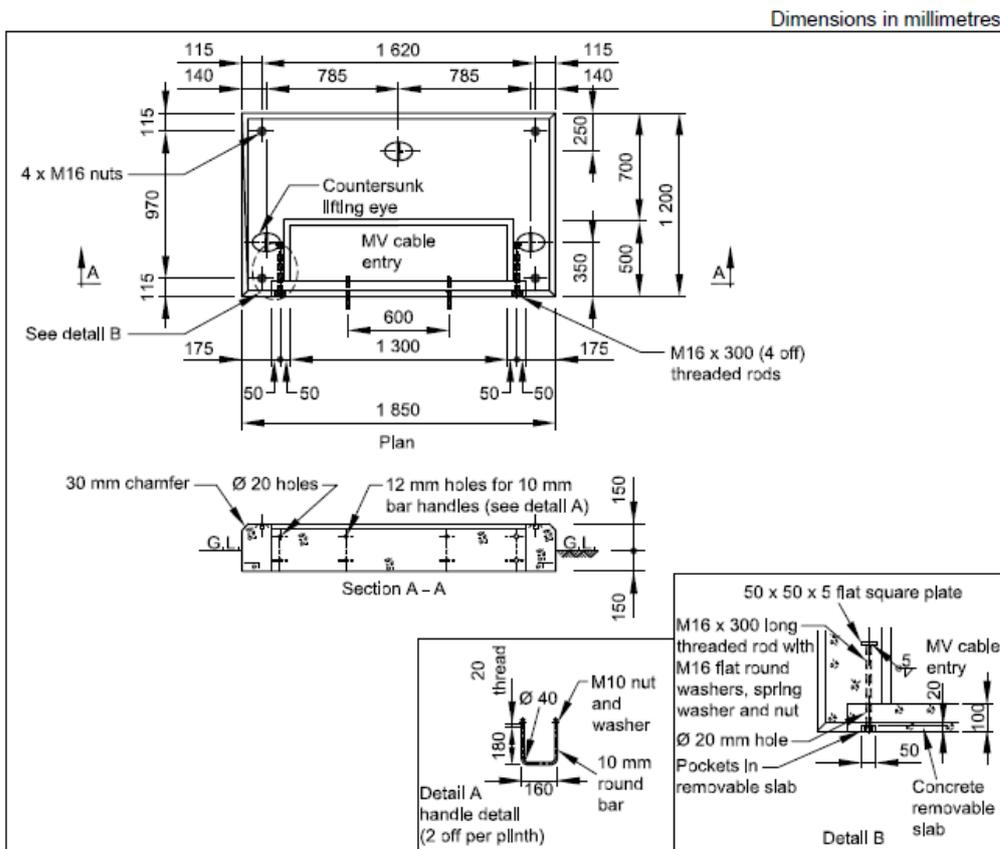


**ITEM 10: THE PLINTH FOR THE THREE-WAY RMU – FIGURE A.5. OF NRS 095**



**Figure A.5 — 11 kV and 22 kV three-way SF<sub>6</sub> RMU plinth details (pre-cast)**

**ITEM 11: THE PLINTH FOR THE FOUR-WAY RMU - FIGURE A.6. OF NRS 095**



Drp.375e

**Figure A.6 — 11 kV and 22 kV four-way SF<sub>6</sub> RMU plinth details (pre-cast)**

## ANNEXURE C

### SCHEDULE OF BIDDER'S EXPERIENCE

A list of references where work of a similar nature was successfully undertaken by the contractor must be submitted in the table below. This table is to be completed and signed by the bidder. Bidders shall not leave this table blank. In the event that no references exist, the bidder shall indicate this by inserting the text "NONE" in the table. Leaving this table blank will invalidate the tender. A minimum of two (2) references shall be acceptable.

The following is a statement of similar work successfully executed by myself / ourselves:

EMPLOYER, CONTACT PERSON AND TELEPHONE NUMBER.	DESCRIPTION OF CONTRACT	VALUE OF CONTRACT (VAT INCL)	START AND END DATES
<div style="border-bottom: 1px solid black; padding-bottom: 5px;">(company)</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">(contact name)</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">(telephone)</div>			
<div style="border-bottom: 1px solid black; padding-bottom: 5px;">(company)</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">(contact name)</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">(telephone)</div>			
<div style="border-bottom: 1px solid black; padding-bottom: 5px;">(company)</div>			

<hr/> (contact name)			
<hr/> (telephone)			

FULL NAME (BLOCK LETTERS): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**14. OCCUPATIONAL HEALTH & SAFETY**

ARTICLE OF AGREEMENT IN TERMS OF SECTION 37(2) OF THE

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

(Hereinafter referred to as the "EMPLOYER")

AND

.....  
.....  
.....

Herein represented by ..... in

his/ her capacity as ..... duly

authorised by virtue of a resolution dated .....

Attached hereto as Annexure A of the said .....

(hereinafter referred to as the "CONTRACTOR").

WHEREAS the CONTRACTOR is the mandatory of the EMPLOYER as contemplated in an agreement in respect of

.....  
.....

.....  
.....

Contract  
number:.....  
.....

AND WHEREAS section 37 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993, hereinafter referred to as the "ACT"), imposes certain powers and duties upon the EMPLOYER.

AND WHEREAS the parties have agreed to enter into an agreement in terms of section 37(2) of the ACT.

NOW THEREFORE the parties agree as follows:

1. The CONTRACTOR undertakes to acquaint the appropriate officials and employees of the CONTRACTOR with all relevant provisions of the ACT and the regulations promulgated in terms thereof.

2. The CONTRACTOR undertakes that all relevant duties, obligations and prohibitions imposed in terms of the ACT and Regulations will be fully complied with: Provided that should the EMPLOYER prescribe certain arrangements and procedures, that same shall be observed and adhered to by the CONTRACTOR, his officials and employees. The CONTRACTOR shall bear the onus of acquainting himself/herself/itself with such arrangements and procedures.

3. The CONTRACTOR hereby accepts sole liability for such due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures, if any, imposed by the ACT and Regulations and the CONTRACTOR expressly absolves the EMPLOYER from itself being obliged to comply with any of the aforesaid duties, obligations, prohibitions, arrangements and procedures as the case may be.

4. The CONTRACTOR agrees that any duly authorized officials of the EMPLOYER shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the CONTRACTOR has complied with this undertaking as more fully set out in paragraphs 1 and 2 above, which steps may include, but shall not be limited to remedy the default of the CONTRACTOR at the cost of the CONTRACTOR.

5. The CONTRACTOR shall be obliged to report forthwith to the EMPLOYER any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the ACT and Regulations, pursuant to work performed in terms of this agreement, and shall, on written demand, provide full details in writing of such investigation, complaint or criminal charge as the case may be.

Thus signed at PRETORIA for and on behalf of the EMPLOYER on this the ..... day of

..... 20 .....

AS WITNESSES:

1. ....

2. ....

.....

SIGNATURE

.....

NAME AND SURNAME

.....

CAPACITY

Thus signed at PRETORIA for and on behalf of the CONTRACTOR on this the

..... day of ..... 20 .....

AS WITNESSES:

1. ....

2. ....

.....

SIGNATURE

.....

NAME AND SURNAME

.....

CAPACITY

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	EED 10-2022.23	CLOSING DATE:	12 September 2022	CLOSING TIME:	10:00am
DESCRIPTION	TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF RING MAIN UNITS AS AND WHEN REQUIRED OVER THREE (3) YEAR PERIOD.				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

<b>Tshwane House</b>					
<b>Supply Chain Management</b>					
<b>320 Madiba Street</b>					
<b>Pretoria CBD</b>					
<b>0002</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes  <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	Neo L Bodiba
CONTACT PERSON	Mulondi Nemaembeni	TELEPHONE NUMBER	012 358 0994
TELEPHONE NUMBER	012 358 6636	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	<a href="mailto:Neob@tshwane.gov.za">Neob@tshwane.gov.za</a>
EMAIL ADDRESS	mulondin@tshwane.gov.za		

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION</b>	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.

- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

- 3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES  NO
- 3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES  NO
- 3.3 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES  NO
- 3.4 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES  NO
- 3.5 IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES  NO

**IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.**

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

DATE: .....

**PRICING SCHEDULE: FIRM PRICES (PURCHASES)**

**NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder.....	Bid Number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR ..... DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by: .....
- At: .....
- Brand and Model .....
- Country of Origin .....
- Does the offer comply with the specification(s)? \*YES/NO
- If not to specification, indicate deviation(s) .....
- Period required for delivery .....
- \*Delivery: Firm/Not firm
- Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

\*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\* Delete if not applicable

**PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)**

**NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder .....	Bid number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by: .....
  - At: .....
  - Brand and model .....
  - Country of origin .....
  - Does the offer comply with the specification(s)? \*YES/NO
  - If not to specification, indicate deviation(s) .....
  - Period required for delivery .....
  - Delivery: \*Firm/Not firm
- \*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- \* Delete if not applicable

**PRICE ADJUSTMENTS**

**A. NON-FIRM PRICES SUBJECT TO ESCALATION**

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left( D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.
- (1-V) Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
- D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1,D2...etc. must add up to 100%.
- R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
- R1o, R2o = Index figure at time of bidding.
- VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated.....      Index..... Dated.....      Index..... Dated.....  
 Index..... Dated.....      Index..... Dated.....      Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE


**B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS**

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

ADJUSTMENT PERIODS	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE
1 <sup>st</sup> Adjustment	After 12 calendar months
2 <sup>nd</sup> Adjustment	After 24 calendar months

**NB: Unless prior approval has been obtained from Supply Chain Management, no adjustment in contract prices will be made**

**DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 3.1 Full Name of bidder or his or her representative: .....
  - 3.2 Identity Number: .....
  - 3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>) .....
  - 3.4 Company Registration Number: .....
  - 3.5 Tax Reference Number: .....
  - 3.6 VAT Registration Number: .....
  - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
  - 3.8 Are you presently in the service of the state? **YES / NO**
  - 3.8.1 If yes, furnish particulars. ....  
.....

<sup>1</sup> MSCM Regulations: “in the service of the state” means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES/NO**

3.9.1 If yes, furnish particulars. ....  
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars. ....  
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars. ....  
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars. ....  
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars. ....  
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars: ....  
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

**DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

1 Are you by law required to prepare annual financial statements for auditing? **\*YES / NO**

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....  
.....

2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days? **\*YES / NO**

2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days. **\*YES / NO**

2.2 If yes, provide particulars.

.....  
.....  
.....  
.....

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? **\*YES / NO**

3.1 If yes, furnish particulars

.....  
.....

4.1 Will any portion of goods or services be sourced from outside **\*YES / NO**

the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

**I, THE UNDERSIGNED (NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM  
IS CORRECT. I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS  
DECLARATION PROVE TO BE FALSE.**

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated **to exceed** R50 000 000 (all applicable taxes included) and therefore the **90/10** preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	90
B-BBEE STATUS LEVEL OF CONTRIBUTION	10
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into

account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### **3. ADJUDICATION USING A POINT SYSTEM**

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR PRICE

##### 4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration  
 $P_t$  = Comparative price of bid under consideration  
 $P_{\min}$  = Comparative price of lowest acceptable bid

#### 5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

5.1 In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.

5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

**6. BID DECLARATION**

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

**7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1**

7.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

**8. SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

8.1.1. If yes, indicate:

i) What percentage of the contract will be subcontracted .....%

- ii) The name of the sub-contractor .....
- iii) The B-BBEE status level of the sub-contractor .....
- iv) Whether the sub-contractor is an EME.

***(Tick applicable box)***

YES		NO	
-----	--	----	--

**9. DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm: .....

9.2 VAT number: .....

9.3 Company registration number: .....

**9.4 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
  - One person business/sole propriety
  - Close corporation
  - Company
  - (Pty) Limited
- [TICK APPLICABLE BOX]

**9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

**9.6 COMPANY CLASSIFICATION**

- Manufacturer
  - Supplier
  - Professional service provider
  - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

**9.7 MUNICIPAL INFORMATION**

**Municipality where business is situated:** .....

**Registered Account Number:** .....

**Stand Number:** .....

9.8 Total number of years the company/firm has been in business .....

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES	
1.	.....
2.	.....

.....	
SIGNATURE(S) OF BIDDERS(S)	
DATE	.....
ADDRESS:	.....
	.....
	.....

## DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

### 1. General Conditions

- 1.1 Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2 Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3 Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BEE.
- 1.4 A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5 The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) on the date of advertisement of the bid as indicated in paragraph 3.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

1.6 A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

Description of services, works or goods      Stipulated minimum threshold

**TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF RING MAIN UNITS AS AND WHEN REQUIRED OVER THREE (3) YEAR PERIOD.**

Industry/ Sector/ Sub-sector	Local Content Threshold
Air insulated Medium Voltage Switchgear	50%
<ul style="list-style-type: none"> <li>• Instrument transformers</li> <li>• Busbar</li> <li>• Housing</li> <li>• Switching devices</li> </ul>	15% 5% 25% 5%

3. Does any portion of the goods or services offered have any imported content?

***(Tick applicable box)***

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.resbank.co.za](http://www.resbank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	

Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION  
(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. EED 10-2022.23**

**ISSUED BY:** (Procurement Authority / Name of Institution): City of Tshwane  
.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thedti.gov.za/industrial\\_development/ip.jsp](http://www.thedti.gov.za/industrial_development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names), do hereby declare, in my capacity as ..... of ..... (name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R

Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.**

**The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_

### Annex C

#### Local Content Declaration - Summary Schedule

(C1)	<b>Tender No.</b>	EED 10-2022.23
(C2)	<b>Tender description:</b>	TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF RING MAIN UNITS AS AND WHEN REQUIRED OVER THREE (3) YEAR PERIOD.
(C3)	<b>Designated product(s):</b>	
(C4)	<b>Tender Authority:</b>	
(C5)	<b>Tendering Entity name:</b>	
(C6)	<b>Tender Exchange Rate:</b>	Pula <input type="text"/> EU <input type="text"/> GBP <input type="text"/>
(C7)	<b>Specified local content %</b>	

**NOTE: VAT TO BE EXCLUDED FROM ALL CALCULATIONS**

#### Calculation of local content

Tender item no's	List of items	Tender price - each (excl VAT)	Exempted imported value	Tender value- net of exempted imported content	Imported value	Local value	Local content % (per item)

#### Tender summary

Tender Qty	Total tender value	Total exempted imported content	Total Imported content

(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)
1	Outdoor metering RMU for supplying transformer loads of up to 4 MVA.						
2	Indoor metering RMU for supplying transformer loads of up to 4 MVA.						
3	Outdoor non-metering RMU for supplying transformer loads of up to 500 kVA.						
4	Indoor non-metering RMU for supplying transformer loads of up to 500 kVA.						
5	Indoor non-metering RMU for supplying transforme						

(C16)	(C17)	(C18)	(C19)

	r loads of up 2 MVA												
6	Indoor combination 2-circuit breakers and 2 - isolators												
7	Outdoor Three-way switch												
8	Outdoor Four-way Switch												
9	Combination Outdoor circuit breaker and Three-way												
10	Concrete plinth for the three-way RMU												
11	Concrete plinth for the four-way RMU												

(C20) Total tender value R 0

Signature of tenderer from Annex B

(C21) Total Exempt imported content R 0

**(C22) Total Tender value net of exempt imported content** R 0

**(C23) Total Imported content** R 0

**(C24) Total local content** R 0

**(C25) Average local content % of tender**

Date: \_\_\_\_\_





				<b>(D32) Total imported value by tenderer</b>						R 0	
<b>C. Imported by a 3rd party and supplied to the Tenderer</b>				<b>Calculation of imported content</b>						<b>Summary</b>	
Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Quantity imported	Total imported value
<i>(D33)</i>	<i>(D34)</i>	<i>(D35)</i>	<i>(D36)</i>	<i>(D37)</i>	<i>(D38)</i>	<i>(D39)</i>	<i>(D40)</i>	<i>(D41)</i>	<i>(D42)</i>	<i>(D43)</i>	<i>(D44)</i>
<b>(D45) Total imported value by 3rd party</b>										R 0	

<b>D. Other foreign currency payments</b>			<b>Calculation of foreign currency payments</b>		<b>Summary of payments</b>	
Type of payment	Local supplier making	Overseas beneficiary	Foreign currency value paid	Tender Rate of Exchange	Local value of payments	

	<b>the payment</b>			
(D46)	(D47)	(D48)	(D49)	(D50)

(D51)

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

Signature of tenderer from Annex B

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

R 0

\_\_\_\_\_  
Date:

**This total must correspond  
with Annex C - C 23**




**(E9) Total local products (Goods, Services and Works)** R 0

(E10) **Manpower costs** (Tenderer's manpower cost) R 0

(E11) **Factory overheads** (Rental, depreciation & amortisation, utility costs, consumables etc.) R 0

(E12) **Administration overheads and mark-up** (Marketing, insurance, financing, interest etc.) R 0

**(E13) Total local content** R 0

**This total must correspond with Annex C - C24**

Signature of tenderer from Annex B

Date: \_\_\_\_\_

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

**THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.**

**PART 1 (TO BE FILLED IN BY THE BIDDER)**

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to **CITY OF TSHWANE MUNICIPALITY** in accordance with the requirements and specifications stipulated in bid number **EED 10-2022.23** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Technical Specification(s);
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1.	.....
2.	.....
DATE: .....	

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I ..... in my capacity as ..... accept your bid under reference number ..... dated ..... for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorized to sign this contract.

SIGNED AT .....ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1. ....

2. ....

DATE: .....

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM  
TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION  
MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE  
FALSE.**

.....  
**Signature**

.....  
**Date**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: **EED 10-2022.23**

**TENDER TO APPOINT SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF RING MAIN UNITS AS AND WHEN REQUIRED OVER THREE (3) YEAR PERIOD.**

(Bid Number and Description)

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:  
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.

<sup>3</sup> Joint venture or consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



# **THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

# GENERAL CONDITIONS OF CONTRACT

July 2010

### NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

## TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
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6. Patent rights
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8. Inspections, tests and analysis
9. Packing
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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 “Day” means calendar day.
  - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
  - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
  - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
  - 1.12 ”Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
  - 1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 “GCC” means the General Conditions of Contract.
- 1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the organization purchasing the goods.
- 1.22 “Republic” means the Republic of South Africa.
- 1.23 “SCC” means the Special Conditions of Contract.
- 1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

**1. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid.  
Where applicable a non-refundable fee for documents may be charged.

- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Inspections, tests and analyses**
- 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

- 11. Insurance** 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services, services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.
- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract**
- 18.1 No variation in or modification of the terms of the contract shall be made **amendments** except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

#### **25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
<b>26. Termination for insolvency</b>	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
<b>27. Settlement of Disputes</b>	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, <ul style="list-style-type: none"> <li>(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and</li> <li>(b) the purchaser shall pay the supplier any monies due the supplier.</li> </ul>
<b>28. Limitation of liability</b>	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; <p>the supplier shall not be liable to the purchaser, 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 the supplier to pay penalties and/or damages to the purchaser; and</p> <p>the aggregate liability of the supplier to the purchaser, 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.</p>
<b>29. Governing language</b>	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

**DRAFT SERVICE LEVEL AGREEMENTS**

**SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

(Hereafter referred to as the “**City**”)

Herein Represented by:

In the capacity as: **The City Manager**

(Duly authorised hereto)

**AND**

.....

(Hereafter referred to as the “**SERVICE PROVIDER**”)

Herein Represented by: .....

In the capacity as:.....

(Duly authorised hereto)

**SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by ..... in his capacity as City Manager duly authorised thereto under and by virtue of a resolution passed on ....., and who by his signature hereto warrants that he/she is properly authorised to sign this Agreement.

(Herein referred to as the “**CITY**”)

**AND**

**Service Provider**.....

**Registration Number** .....

Herein represented by ....., in his capacity as ..... duly authorized thereto under and by virtue of a resolution of the Board passed on .....(DATE), a copy of which is annexed as Annexure “**B**”, and who by his signature hereto warrants that he is properly authorized to sign this Agreement

(Herein referred to as the “**SERVICE PROVIDER**”)

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**RECORDAL:**

**WHEREAS** the City of Tshwane requires to appoint service providers for the supply, delivery and off-loading, of electricity energy meters to the City of Tshwane as and when required over a three (3) year period

**AND WHEREAS** the City wishes to appoint ..... as a service provider;

**AND WHEREAS** the service provider wishes to provide such services;

**AND WHEREAS** the service provider has indicated that it has the necessary expertise, skills and capabilities to provide the service;

**NOW THEREFORE** the Parties have agreed to enter into this Agreement, in terms of which .....(**SP**) shall provide the Services in the Service Areas and/or Delivery Area and provide maintenance and support thereof, to the City in accordance with the terms and subject to the conditions of this Agreement:

## 1 DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them:

- 1.1 “**Agreement**” means this Service Level Agreement and shall include any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;
- 1.2 “**Business Day**” means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;
- 1.3 “**Business Week**” means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;
- 1.4 “**City**” means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;
- 1.5 “**Contact Persons**” means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 34 below and who can be substituted in writing from time to time;
- 1.6 “**Contract Price**” shall mean the amount reflected as the contract price in clause 9 below;
- 1.7 “**Contract Period**” means the contract period as reflected on Annexure “**A**”;
- 1.8 “**Effective Date**” means notwithstanding the Signature Date,  
.....
- 1.9 “**GCC**” shall mean the General Conditions of Contracts as stated in the Government Procurement: General Conditions of Contract July 2010;

- 1.10 “**Goods**” shall mean the Services related goods to be procured by the City from time to time as stated in clause 8 below and the Appointment Letter attached herewith as Annexure “**A**”;
- 1.11 “**Intellectual Property**” means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and improvements to the Intellectual Property, otherwise pursuant to this Agreement;
- 1.12 “**Month**” means a calendar month;
- 1.13 “**Parties**” means the City and Service Provider and “**Party**” means either of them as the context requires;
- 1.14 “**Order**” means an official written order issued for the supply of Goods and or Services under this Agreement;
- 1.15 “**Services**” means services to be provided by the Service Provider to the City as detailed in clause 7 below;
- 1.16 “**Service Provider**” means a contractor appointed by the City of Tshwane with the company laws of the Republic of South Africa with a company registration number;
- 1.17 “**Signature Date**” means the date of signature of this Agreement by the Party signing last;
- 1.18 “**Subcontract**” means any contract or agreement or proposed contract between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

- 1.19 “**Subcontractor**” means the third party with whom the Service Provider enters into a Subcontract;
- 1.20 “**Tax Invoice**” means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and
- 1.21 “**VAT**” means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

## 2 INTERPRETATION

- 2.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 2.2 Unless the context clearly indicates a contrary intention, any word connoting:
- 2.2.1 any singular shall be deemed to include a reference to the plural and vice versa;
- 2.2.2 any one gender shall be deemed to include a reference to the other two genders; and
- 2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.
- 2.3 The expiry or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that Agreement shall not apply.

- 2.5 The provision of this Agreement shall be read in conjunction with the provisions of the Government Procurement General Conditions of Contracts (“GCC”) 2010 as if they are incorporated herein.
- 2.6 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.7 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.
- 2.8 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any party, then notwithstanding that, it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.

**3 APPOINTMENT**

The City hereby appoints the Service Provider, who accepts such appointment, as per the Appointment letter dated ..... attached herewith as Annexure “A” to provide the Services in accordance with the terms and subject to the conditions of this Agreement.

**4 PURPOSE OF THE AGREEMENT**

- 4.1 The Purpose of this Agreement is to:
  - 4.1.1 formalise and regulate the working relationship between the Parties;
  - 4.1.2 set out the roles and responsibilities of the Parties; and
  - 4.1.3 define process and procedures to be followed by the Parties.

## **5 RELATIONSHIP**

Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under this Agreement is that of an independent service provider and its status shall in no way be deemed to be that of an agent or employee of the City, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the City or to contract in the name of the City, or create a liability against the City in any way or for any purpose.

## **6 DURATION**

This Agreement shall commence on the Effective Date and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 31 below.

## **7 CONTACT PERSON**

- 7.1 The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person.
- 7.2 The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.
- 7.3 The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.
- 7.4 Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.
- 7.5 Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

## **8 SCOPE OF GENERAL SERVICES**

8.1 The Service Provider shall, for the duration of this Agreement, provide the Services in terms of the Appointment Letter and as outlined fully in the Scope of Work including but not limited to:

8.1.1. Appoint a panel of service providers for the supply, delivery and off-loading of ring main units as and when required over three (3) year period.

## **9 PRICE AND PAYMENT**

9.1 The City shall pay to the Service Provider as stated in the Appointment Letter attached and or in terms of the Scope of Work attached herein as **Annexure “C”**.

9.2 All payments under this Agreement shall be made by electronic fund transfer or other forms of payment as the Parties may agree from time to time, upon receipt of valid and undisputed Tax Invoices and month-end statements together with the supporting documentation from the Service Provider, once the undisputed Tax Invoices or such portion of the Tax Invoices which are undisputed become due and payable.

9.3 All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

9.4 Unless otherwise provided in the Schedules, valid Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by The City within 30 (thirty) days after the date of receipt by The City of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation, but in any event not later than 90 (ninety) days of receipt of such statement.

9.5 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties.

9.6 The City shall pay the amount reflected on a Tax Invoice once the City's Contact Person has verified that the Services set out in a schedule have been rendered and the Tax Invoice amount has been approved by the City.

9.7 All Tax Invoices shall be addressed to the City' Contact Person.

9.8 All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

**Bank:** .....  
**Account type:** .....  
**Account No:** .....  
**Branch No:** .....

9.9 Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the Service Provider to the City. The City shall not be liable for any costs or damages suffered by the Service Provider as a result of such late payment.

9.10 If the City fails to make payment in accordance with the Agreement or fails to comply with any provisions of any Order issued under this Agreement, the Service Provider reserves the right to cancel any undelivered portion of the Goods and/or to suspend the Services, and the City shall remain responsible for the completed and partly completed work up to the date of such cancellation.

**10 PRICE RESTRUCTURING**

10.1 The Service Provider shall be subject to a price review every year.

10.2 The City shall embark on a benchmarking exercise every 12 (twelve) months where the City shall benchmark the Service Provider's Contract Price against the prevailing market rates.

10.3 In the event it emerges that the Service Provider's charges in respect of the Contract Price and other charges under this Agreement are materially higher than the reasonable benchmark ascertained by the City

or that the City can acquire similar Services of a like quality from another supplier at a total delivered cost that is lower than the total delivered cost of the Services acquired hereunder from the Service Provider, the City shall have the right to notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Contract Price and any other charges hereunder, on such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.

10.4 If the Service Provider fails to do so or cannot legally do so, The City may:

10.4.1 acquire the Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of the City and the Service Provider hereunder shall be reduced accordingly;

10.4.2 terminate this Agreement without any penalty, liability or further obligation; or

10.4.3 continue under this Agreement.

10.5 Within 30 (thirty) calendar days of a notice by the City or at any time the City so requests, the Service Provider shall certify in writing to the City that it is in compliance with this clause and shall provide all information that the City reasonably requests in order to verify such compliance.

## **11 SERVICE LEVELS**

11.1 The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's representations regarding service levels including, *inter alia*:

11.1.1 capacity allocations in accordance with the Service to be provided;

11.1.2 all work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the Services industry and shall be executed by the Service Provider to the total satisfaction of the City.

11.2 The Service Provider shall provide suitably qualified and trained employees to provide the Services to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the City, and shall allocate employees with the technical skill and knowledge onsite at the City at all times during normal working hours, if the City so requires.

11.3 Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 7 above.

## **12 WITHHOLDING OF PERFORMANCE**

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services from the City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 30 below.

## **13 PENALTY**

13.1 Should the Service Provider fails to comply with its obligations in terms of this Agreement, the City may impose a penalty on the Service Provider in terms of clause 13.3 below.

13.2 The City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.

13.3 Should the Service Provider fail to remedy the default within 7 (seven) days after receiving the notice, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose as a penalty, a

sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance not exceeding 10% of the total Contract Price. The City may also consider termination of the Agreement as stated in clause 31 of this Agreement once the maximum penalty amount related to delays has been reached.

13.4

13.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 31 below.

#### **14 ACCESS**

14.1 The City shall allow the Service Provider reasonable access to its premises, provided that:

14.1.1 access is related to the Services to be provided by the Service Provider; and

14.1.2 the Service Provider adheres to all rules, regulations and instructions applicable at City's premises.

14.2 The Service Provider is required to notify City monthly of employees who are to provide Services at the Service Areas and/or Delivery Areas.

14.3 The City shall grant the Service Provider and/or its employees, referred in clause 14.2 above, access to its premises to perform its obligations in terms of this Agreement.

14.4 The Service Provider and its employees shall at all time when entering the premises and/or Service Areas and/or Delivery Areas of the City comply with all rules, laws, regulations and policies of the City.

## 15 DELIVERY OF GOODS

- 15.1 The Service Provider shall deliver the Goods within 8 weeks after receipt of an official purchase order.
- 15.2 Should the Service Provider be unable to deliver the Goods on the Delivery Date, the Service Provider shall inform the City of its inability to deliver the Goods, the reason thereof, and shall provide the City with a reasonable alternative Delivery Date which in any event shall not be more than 14 (fourteen) days from the original Delivery Date.
- 15.3 In the event that the Service Provider is unable to deliver the Goods on the Delivery Date 3 (three) times in a period of 6 (six) months, then the City shall be entitled to terminate this Agreement by giving the Service Provider 1 (one) month's written notice to terminate.
- 15.4 Upon delivery of the Goods by the Service Provider, the City's contact person shall sign the delivery document provided by the Service Provider as acknowledgement of receipt of the Goods. Such acknowledgement of receipt shall not constitute an acceptance:
- 15.4.1 that the Goods were received in good condition;
  - 15.4.2 that the Goods were free of any defects;
  - 15.4.3 that the Goods were fit for the purpose for which they were purchased; and/or
  - 15.4.4 of any terms and conditions of the delivery document.
- 15.5 In the event that the City notifies the Service Provider, within five (5) Business Days, that the Goods delivered are not in accordance with the order, the City shall be entitled to return the Goods to the Service Provider at the Service Provider's cost and the Service Provider shall deliver the replacement Goods ordered within five (5) Business Days of taking delivery of the defective Goods.

15.6 The Service Provider shall bear all risk of loss or damage to the Goods until they are delivered to the City's named place of destination, and transfer of ownership of the Goods shall pass from the Service Provider to the City only when all payments have been made in full.

## **16 DEFECTIVE GOODS**

16.1 The Service Provider shall verify whether the Goods received are in order and without any defects.

16.2 In the event that the City realises that the Goods have any defect, the City shall inform the Service Provider in writing within 5 (five) days of becoming aware of the defect ("Notice of Defect").

16.3 Upon receipt of the Notice of Defect, the Service Provider shall immediately deliver replacement Goods to the City within 14 (fourteen) Business Days of receiving the Notice of Defect referred to in clause 16.2 above and replace the defective Goods.

16.4 The cost of returning and replacing the defective Goods shall be borne by the Service Provider.

16.5 The Service Provider shall be responsible for the replacement amount of any parts of the Goods that are to be replaced in terms of this Agreement.

## **17 AMENDMENT OR CANCELLATION OF PURCHASE ORDER**

The City is entitled to cancel an order, reschedule delivery of the Goods or change the Delivery Area and Delivery Date on fourteen (14) days written notice to the Service Provider.

## **18 INSPECTION**

18.1 The City may at any time inspect the Goods and/or Services levels of the Service Provider in terms of this Agreement.

18.2 If the City is, at any time, dissatisfied with the service levels then the Service Provider shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.

18.3 The Service Provider shall immediately upon receipt of written demand by the City, remedy such failure or default, within 7 (seven) Business Days from the date of receipt of the notice, free of charge.

18.4 Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to impose penalties as provided for in clause 12 above or invoke the provisions of clauses and/or clause 30 below.

18.4.1 To enable the City to determine whether the Goods and/or Services rendered in terms of this Agreement are being complied with the Service Provider shall:

*18.4.1.1 provide the City with such information as it may reasonably require;*

*18.4.1.2 allow the City to inspect and take copies of any records of the Service Provider relating to the Goods and/or Services, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;*

*18.4.1.3 allow the City or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given to the Service Provider.*

#### **18.5 Service Provider to Provide Reasonable Assistance**

18.5.1 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the Service Provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is

or has been in use in connection with the keeping of the information.

18.5.2 Any information required to be provided to the City pursuant to this clause 18 shall be provided by the Service Provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.

18.5.3 The cost of any inspection contemplated in terms of this clause 18 shall be for the account of the City unless any material irregularity or failure on the part of the Service Provider is determined by City in the course of such inspection.

18.6 The inspection contemplated in this Agreement will be conducted:

18.6.1 during normal business hours;

18.6.2 save where the circumstances justify it, on reasonable notice to the Service Provider; with the minimum interference in the provision of the Goods and/or Services and the Service Provider's other operations.

## **19 MAINTENANCE AND SUPPORT**

The SP will be required to provide support on the communication software and module during the contract period.

## **20 TRAINING**

The Service Provider shall after delivery and installation of the Goods, and as part of Maintenance And Support, ensure that the a minimum of 20 personnel from the City of Tshwane's metering section, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the Goods.

## **21 SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES AND LIABILITIES**

### **21.1 Service Warranties**

21.1.1 The Service Provider warrants that in relation to each Service provided in terms of this Agreement:

- 21.1.1.1 *it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;*
- 21.1.1.2 *it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;*
- 21.1.1.3 *it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;*
- 21.1.1.4 *all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;*
- 21.1.1.5 *it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;*
- 21.1.1.6 *the use or possession by the City of any Materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;*
- 21.1.1.7 *with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services and/or delivering Goods and/or similar to the Services and/or Goods;*

- 21.1.1.8 *which Services and/or Goods will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship; ;*
- 21.1.1.9 *using and adopting any standards, processes and procedures required under this Agreement;*
- 21.1.1.10 *warranting that it shall employ suitably qualified and trained employees to provide the Services and/or Goods to the City and it shall allocate employees in accordance with the technical skill and knowledge required;*
- 21.1.1.11 *free from any defects in material and workmanship;*
- 21.1.1.12 *maintaining and causing to be maintained the highest standard of workmanship and care in undertaking the Services and/or processing the Goods;*
- 21.1.1.13 *maintaining and caused to be maintained the highest standard of care and diligence in providing the Services, maintenance and support;*
- 21.1.1.14 *ensuring that all applicable laws are observed;*
- 21.1.1.15 *without derogating from the generality of the foregoing, strictly adhering to any or all laws, regulations and accepted procedures with regard to health, hygiene and the maintaining of the environment in the manufacture, packaging, labelling, identification, storage and transportation of the Goods.*

21.1.1.16 *guaranteeing that the Goods shall be in good working condition for the warranty and/ or maintenance period of the Goods, and that the Service Provider shall be responsible for the costs of repair of the Goods should the Goods require to be repaired to their normal use.*

21.1.2 Defective workmanship or failure of the Goods and/or Services shall cease upon expiry of the period of maintenance, being the earlier of twelve (12) months after completion of the Services or eighteen (18) months from delivery of the Goods to the site. Such liability shall be in lieu of any liability implied by law and shall be limited to the repair or replacement, at the election of the Service Provider, of the defective portion of the Goods and/or Services, where after the Service Provider shall have no further liability of whatsoever nature towards the City.

## 21.2 **Indemnity**

21.2.1 The Service Provider hereby indemnifies the City against any claim which may be brought against the City by the Service Provider's personnel or a third party arising from the execution of this Agreement alternatively which arises against the City as a result of the Service Provider's breach of any of the provisions of this Agreement, provided that the City shall notify the Service Provider in writing within a reasonable time, and in any event not less than 14 (fourteen) Business days of the City becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such assistance. The Service Provider may, within 5 (five) Business Days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the City against all and any costs (including attorney and own client costs) which may

be incurred by or awarded against the City as a consequence of the defence of the claim.

### **21.3 Limitation of Liability**

21.3.1 Neither Party shall be liable to the other party for loss of use of any works, loss of profit, loss of contract or for any indirect or consequential loss or damages which may be suffered by the other party in connection with this Agreement.

21.3.2 Notwithstanding anything to the contrary contained or implied in the applicable conditions of contract, and in no event, whether as a result of breach of contract, indemnity, warranty, delict (including negligence), strict liability, or any other cause arising, shall the Service Provider's total liability to the City, or its insurers, for any loss or damage arising out of, or resulting from an Order issued under this Agreement or from the performance or breach thereof, or from the Goods and/or Services furnished hereunder, exceed 100% of the specific Order value.

## **22 SERVICE PROVIDER'S PERSONNEL**

### **22.1 Liability for Criminal Acts of Employees**

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

### **22.2 Character of Employees**

22.2.1 Due to the confidential nature of certain aspects of the Services and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its best commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of personal integrity and honesty and who have not, to their knowledge, being convicted of any crime.

22.2.2 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees

prior to utilizing same to provide the Services in terms of this Agreement.

22.3 The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so.

## **23 STATUTORY AND EMPLOYMENT ISSUES**

### **23.1 The Service Provider shall comply with all employment legislation**

23.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

23.1.2 The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

### **23.2 No employment**

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all costs in the event that the City is required to defend a claim, whether civil or employment related, instituted against it by the Service Provider's personnel should the City defend the matter, the Service Provider hereby indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

### **23.3 Occupational Health and Safety Act, 1993**

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City.

## **24 SUB-CONTRACTING**

24.1 The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party without the prior written consent of the City.

24.2 In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services in terms of this Agreement, it shall apply to the City in writing for consent to do so.

24.3 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.

24.4 The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:

24.4.1 the Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;

- 24.4.2 such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;
- 24.4.3 the Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and
- 24.4.4 no such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

## 25 CONFIDENTIALITY

- 25.1 The Service Provider acknowledge that all information relating to the City confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business; (“**Confidential Information**”), shall remain confidential and shall not be made known unless the City has given written consent to do so.
- 25.2 The information provided by the City in the context of this Agreement is Confidential Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

- 25.3 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:
- 25.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or
  - 25.3.2 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or
  - 25.3.3 The information was received from a third Party not in breach of an obligation of confidentiality.

## **26 INTELLECTUAL PROPERTY RIGHTS**

- 26.1 All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.
- 26.2 All rights in the City name and logo remain the absolute property of the City.
- 26.3 The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Patent, Design, Copyright, Trade Mark or trade secret or other proprietary right of any third party.
- 26.4 The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.
- 26.5 In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service

Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.

26.6 Should any claim be made against the City by any third party in terms of clause 26.1 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.

26.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:

26.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

26.7.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

26.7.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

26.7.4 withdraw the subject of infringement.

## **27 FORCE MAJEURE**

27.1 For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature

beyond the reasonable control of the party claiming Force Majeure and comprehended in the terms thereof.

- 27.2 If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement shall be suspended for the period agreed in writing between the Parties.
- 27.3 In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure (“the Affected Party”) then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period (“Agreed Period”).
- 27.4 In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement without further notice to the other Party.
- 27.5 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall have given notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

## **28 CESSATION**

The Service Provider shall not be entitled to cede or assign or transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written consent of the City.

## **29 CHANGE OF CONTROL / CIRCUMSTANCE**

- 29.1 The Service Provider shall notify the City, in writing, of any change in the Service Provider’s shareholding or membership or any change in the Service Provider’s subsidiary companies or holding or its affiliates.

29.2 The Parties agree that should there be a change as envisaged in clause 29.1 above, the City shall have the opportunity to renegotiate the terms of this Agreement with the 3<sup>rd</sup> party.

29.3 The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the Service Provider to Provide the Goods and/or Services. In the event that any material change or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

### **30 BREACH**

30.1 Subject to clause 29.3 above, should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 5 (five) Business Days and should the Defaulting Party fail to remedy the breach within 5 (five) Business Days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law to:

30.1.1 immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or

30.1.2 request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or

30.1.3 impose penalties as provided for in clause 12 above.

### **31 EARLY TERMINATION**

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement.

### **32 DISPUTES**

32.1 Save for clause 30 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

32.1.1 the interpretation of the Agreement;

32.1.2 the performance of any of the terms of the Agreement;

32.1.3 any of the parties' rights and obligations;

32.1.4 any procedure to be followed;

32.1.5 the termination or cancellation or breach of this Agreement; or

32.1.6 the rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

32.2 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause 31 above shall apply.

32.3 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by

arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa (“the Arbitration Act”).

32.4 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

32.4.1 at any place which the Parties agree, in writing, to be mutually convenient.

32.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in 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 respect rules of evidence.

32.5 If the arbitration is:

32.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;

32.5.2 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing;

32.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

32.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.

32.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

32.8 The arbitrator may:

- 32.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;
  - 32.8.2 interview and question under oath the parties or any of their representatives;
  - 32.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and
  - 32.8.4 make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) days after it has been so requested.
- 32.9 The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.
- 32.10 The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.
- 32.11 Notwithstanding the provisions of clauses 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.
- 32.12 The provisions of this clause 32 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

**33 LAWS AND JURISDICTION**

33.1 This Agreement shall be governed by and interpreted according to the Law of the Republic.

33.2 Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

**34 NOTICES AND COMMUNICATIONS**

34.1 The Parties choose as their respective *domicilium citandi et executandi* (hereinafter referred to as the “*domicilium*”) and for the delivery of any notices arising out of this Agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the address set out below:

**34.1.1 THE CITY:**

Office of the City Manager  
Tshwane House  
2nd Floor, Block D  
320 Madiba Street  
Pretoria, 0001  
P O Box 440  
Pretoria, 0001  
Fax: 086 214 9544  
Attention:  
Telephone:  
Email:

**34.1.2 THE SERVICE PROVIDER:**

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.....  
.....  
.....  
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Attention:  
Telephone:  
Fax:  
Email:

- 34.2 Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.
- 34.3 Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:
- 34.3.1 is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 34.3.2 is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7<sup>th</sup> (seventh) day after the date of posting.
- 34.3.3 is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 34.4 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile.
- 34.5 Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

## **35 GENERAL AND MISCELLANEOUS**

### **35.1 SOLE RECORD OF AGREEMENT**

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

### **35.2 NO AMENDMENT EXCEPT IN WRITING**

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant Party to be of any effect.

### **35.3 WAIVERS**

No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.

### **35.4 SURVIVAL OF OBLIGATIONS**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

### **35.5 APPROVALS AND CONSENTS**

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant Party to be of any effect.

## **36 EXECUTION**

36.1 This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

36.2 The signatories to this Agreement by their signature warrant their authority to enter into this Agreement and the capacity of their principal, if signing in a representative capacity, to enter into this Agreement.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20

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For and on behalf of **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**Duly represented by .....**

**City Manager**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
20

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**Duly represented by .....**

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