



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NO: GFS 05 2021/22**

<b>TENDER DESCRIPTION:</b>	<b>TENDER FOR THE APPOINTMENT OF OFF-BALANCE SHEET REVENUE ENHANCEMENT SOLUTIONS WHICH INCLUDES, IDENTIFICATION OF PROPERTIES THAT ARE BILLED WITH INCORRECT RATES CATEGORIES, IDENTIFICATION OF PROPERTIES THAT ARE NOT IN THE GENERAL VALUATION ROLL AND BILLING SYSTEM, DATA CLEANSING AND MAXIMISATION OF PROPERTY RATES REVENUE IN LINE WITH MUNICIPAL PROPERTY RATES ACT FOR A PERIOD OF TWO YEARS (24 MONTHS) ON AS AN WHEN BASIS.</b>
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**NAME OF BIDDER:** .....

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

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

Prepared by:  
City of Tshwane  
Metropolitan Municipality  
175 C de Wet  
PRETORIA  
0001  
Tel: (012) 358 9999

**BID CLOSING DATE**

**01 December 2021**

Only bidders registered on the Central Supplier Database and with CSD Number will be considered for this tender as it is a requirement from National Treasury.



DEPARTMENT: **GROUP FINANCIAL SERVICES**

**BIDS ARE HEREBY INVITED FROM SUPPLIERS FOR THE FOLLOWING BID:**

Bid No	Description	Dept.	Contact Person	Pre-Qualification	Compulsory Briefing Session	Closing date
GFS 05 - 2021/22	Tender for appointment of Off-balance sheet revenue enhancement solutions which includes, identification of properties that are billed with incorrect rates categories, identification of properties that are not in the general valuation roll and billing system, data cleansing and maximization of property rates revenue in line with municipal property rates act for a period of two years (24 Months) as an when required.	Group Financial Services	Ndivhuwo Lithole <a href="mailto:NdivhuwoL@TSHWANE.GOV.ZA">NdivhuwoL@TSHWANE.GOV.ZA</a> EXT 3474	N/A	<b>Venue:</b> 32 Madiba Street, Tshwane House Building, 1 <sup>st</sup> Floor, Training Centre  <b>Time:</b> 10 <sup>th</sup> November 2021 at 10:00	01 December 2021 at 10:00

THE DOCUMENT IS DOWNLOADABLE ON TSHWANE WEBSITE ([www.tshwane.gov.za](http://www.tshwane.gov.za)) or E-Tender PORTAL

Each Tender shall be enclosed in a sealed envelope, bearing the correct identification details and shall be placed in the tender box located at:

**PROCUREMENT ADVICE CENTRE**

**C DE WET BUILDING**

**175 E'SKIA MPHAHLELE DRIVE (THE FORMER DF MALAN DRIVE)**

**PRETORIA WEST**

**0183**

Documents must be deposited in the bid box not later than **10h00 on the 01 December 2021**

**Please note that briefing session will be held for this tender. Bidders must contact officials below for any enquiries:**

- Technical enquiries: Ndivhuwo Lithole at (012) 358 3474 or [<NdivhuwoL@TSHWANE.GOV.ZA>](mailto:NdivhuwoL@TSHWANE.GOV.ZA)
- Supply Chain enquiries: Kgomoitso Makgale at (012) 358 5478 or [kgomotsomakg@tshwane.gov.za](mailto:kgomotsomakg@tshwane.gov.za)

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. CoT does not bind itself to accept the lowest or any other bid in whole or in part.

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18.	Clearance Certificate or Unique Pin		
19.	BBBEE Certificate		
20.	CSD summary report		

### **VERY IMPORTANT NOTICE ON DISQUALIFICATIONS:**

A bid not complying with the peremptory requirements stated hereunder will be regarded as not being an “Acceptable bid”, and as such will be rejected. “Acceptable bid” means any bid which, in all respects, complies with the conditions of bid and specifications as set out in the bid documents, including conditions as specified in the Preferential Procurement Policy Framework Act (Act 5 of 2000) and related legislation as published in Government Gazette number 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 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, or;
  - 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 with the municipality in respect of contract that would cause a conflict of Interest.
7. Bid offers will be rejected if the bidder or any of his directors is listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act 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 CoT's Supply Chain Management System.
9. Failure to complete and sign the certificate of independent determination or disclosing of wrong information.

Failure to submit 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. COMPANIES**

If the bidder is a company, a certified copy of the resolution of the Board of Directors, personally signed by the chairperson of the board, authorizing the person to signs this bid to do so, as well as 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 authorized to sign all documents in  
connection with BID NO. ....

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

**IN HIS 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:

Full name of partner	Residential address	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....

We, the undersigned partners in the business trading as, .....

Hereby authorize ..... to sign this bid as well s any contract resulting from the bid and any other documents and correspondence in connection with this bid / or contract on our behalf.

.....	.....	.....	Signature
Signature	Signature		
.....	.....	.....	Date
Date	Date		

## C. ONE-PERSON BUSINESS

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

.....	.....	Signature
	Date	

#### **D. CLOSE CORPORATION**

If 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, together with a resolution by its members authorizing 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 must be submitted with this Bid.

An example is shown below:

By resolution of the members at the meeting on the .....200.....at  
.....Mr. / Ms .....whose signature  
appear below, has been duly authorized to sign all documents in connection with BID NO.  
.....

**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 authorize Mr./Ms . . . . .  
..... , authorized signatory of the company . . . . .  
..... , acting in the capacity of 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 SIGNATORY	AUTHORISED
Lead partner		Signature:.. . . . . . . . . . . Name:..... Designation:.....	
		Signature:.. . . . . . . . . . . Name:..... Designation:.....	
		Signature:.. . . . . . . . . . . Name:..... Designation:.....	
		Signature:.. . . . . . . . . . . Name:..... Designation:.....	





(Group Chief Financial Officer/Revenue Management Division)

## **PROPERTY RATES AND REVENUE ENHANCEMENT SOLUTION**

**OFF-BALANCE SHEET REVENUE ENHANCEMENT SOLUTIONS WHICH INCLUDES, IDENTIFICATION OF PROPERTIES THAT ARE BILLED WITH INCORRECT RATES CATEGORIES, IDENTIFICATION OF PROPERTIES THAT ARE NOT IN THE GENERAL VALUATION ROLL AND BILLING SYSTEM, DATA CLEANSING AND MAXIMISATION OF PROPERTY RATES REVENUE IN LINE WITH MUNICIPAL PROPERTY RATES ACT FOR A PERIOD OF TWO YEARS (24 MONTHS) AS AN WHEN REQUIRED.**

**BID NUMBER**

**(GFS 05 2021/22)**

### **1. INTRODUCTION AND PURPOSE**

The City of Tshwane Metropolitan Municipality is calling for tenderers with extensive experience and knowledge in revenue enhancement. The successful bidder will ensure completeness of service revenue; property data and generation of unbilled and incorrectly billed property rates revenue and it is aligned to the Municipal Property Rates Act (MPRA).

### **2. BACKGROUND**

The project was identified as part of the Revenue Enhancement Strategies to increase revenue recovery.

The project is aimed at assisting the City of Tshwane with regards to maximising new property rates revenue in line with the Municipal Property Rates Act and the updating and data cleansing to ensuring that the City has a reliable data for budgeting purposes, whilst at the same time address Revenue leakages.

The project Team will report to the Municipal Valuer situated at Bothongo Plaza East

List all the stakeholders involved

1. Property Valuation
2. Energy and Electricity
3. Water and Sanitation
4. Waste Management Division
5. ICT
6. City Planning

Revenue Management Divisional Head and Municipal Valuer will verify the accuracy of the Data before it is deployed to the System.

### **3. PROJECT SCOPE**

The project is aimed at assisting the City of Tshwane with regards to maximising new property rates revenue in line with the Municipal Property Rates Act and the updating and data cleansing to ensure that the City has a reliable data for budgeting purposes. Furthermore, to improve efficiencies in collecting revenue due and enhance the level of services offered to its customers.

#### **2.1 Increased Property Rates Revenue**

To achieve this, the City wants to partner with a reputable service provider which has extensive experience and knowledge in property rate revenue enhancement. The successful bidder will ensure:

- (a) completeness of property data and,
- (b) the generation of unbilled and incorrectly billed property rates revenue aligned to the Municipal Property Rates Act.

The bidders are requested to submit to the City innovative and proven solutions to maximise the property rates revenue of the City. Revenue Enhancement Solution must assist the City to effectively enhance property rates revenue and outline the process to update the data and database of the City.

The submitted proposals by the bidders are required to address the following aspects:

- (a) Recommendation on revenue and revenue management improvements.
- (b) Data cleansing to ensure effective revenue collection.
- (c) Identification of new revenue sources and mechanisms.
- (d) Identification of existing unlocked property rates revenue.
- (e) Management and maintaining of property rates revenue source.
- (f) Assist the Municipal Valuer in implementation of Section 78 of the Municipal Property Rates Act.
- (g) Innovative technology and system that identify property discrepancies and report such to the Municipality.
- (h) Speed of implementation (Project Plan)

#### 4. DELIVERABLES

- **Acquisition of most Recent Cadastre`s & GIS diagrams from SG office and comprehensive GIS system.**
- **Acquire, supply and clean-up of title deeds data for the municipality,** link the acquired deeds data to the new GIS Information
- **Build link from financial system** to link financial system data to Title Deeds and SG data
- **Create database and Link SG cadastre & title deeds & financial** system data in one database.
- **Perform a GIS Gap Analyses & Audit of properties identified,** clarify unaccounted properties and add omissions for future supplementary valuation and processing of updating database
- **Verification of current certified general valuation Rolls and supplementary valuations Roll data against information supplied.**
- **Identify services supplied per property i.e.; electricity, water, sewage, Refuse, Rates billing** etc.
- **Verify correct tariff for Electricity, water, sewage and Refuse** charged. If property is billed correctly
- **Verify that the correct valuation and category** is currently billed on the financial system and compare survey findings with published valuation Rolls
- **Verify the correct implementation of the Regulations, by laws & policy`s** on the property for billing purposes
- **Verify the correct implementation tariffs, rebates and exemptions** as managed in the Rates Policy per category, the phasing in of newly Rated properties and the Required application documents as stipulated to qualify for the Rebates and exemptions per each property
- **Property verification via the use of HD video technology Geo coded latitude & longitude and linked to GIS.** Supply property Register data in an online database application as per Section 23 of the MPRA incorporating part A & part B, viewable by both officials and property owners Report and the process to correct all identified errors, omissions related to property and ensure speedy rectification as per Section 78 of the MPRA to maximize the revenue to the Municipality.

#### 5. STAGES OF EVALUATION

This tender will be evaluated in four evaluation stages namely:

- Stage 1: Administrative Compliance**
- Stage 2: Mandatory requirements**
- Stage 3: Functionality**
- Stage 4: Preference Point System**

##### 5.1 ADMINISTRATIVE COMPLIANCE

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

##### 5.2 MANDATORY REQUIREMENTS

Bidders must attach certified copies of registration certificate with the South African Council for the Property Valuers Profession.

Minimum of 5 property valuers' certified registration certificates must be attached as part of the bid submission

(Failure to attach the above stated requirements will lead to disqualification)

### 5.3 FUNCTIONALITY CRITERIA

Only tenderers who obtain a minimum of 70 points in respect of the following criteria will be considered for the next stage of evaluation. Bidders that do not achieve a minimum 70 points out of 100 points will not be evaluated further.

Nr.	Quality Criteria	Sub Criteria	Scale	Weight	Total
1	Data cleansing for effective revenue collection Revenue Enhancement projects The number of successfully completed work by the company: Supporting Documents: (Please provide a reference letter /completion certificate relevant to the contract/service, signed and in the company letterhead with contact numbers)	5 or more completed projects	3	10	30
		3 - 4 completed projects	2		
		1 - 2 completed projects	1		
2	Previous projects in Property Municipal Valuation & Revenue Enhancement projects The number of successfully completed work by the company: Supporting Documents: (Please provide a reference letter /completion certificate relevant to the contract/service, signed and in the company letterhead with contact numbers)	5 or more completed projects	3	10	30
		3 - 4 completed projects	2		
		1 - 2 completed projects	1		
3	Experience of the Property Valuer (attach <b>all 5</b> cv's of the property valuers) Bidders to note that the highest experienced valuer will be used for purposes of evaluation.	Experience of Property Valuer – 6yrs and above	5	5	25
		Experience of Property Valuer – 5yrs and above	4		
		Experience of Property Valuer – 4yrs and above	3		
		Experience of Property Valuer – 3yrs and above	2		
		Experience of Property Valuer – 1-2yrs and	1		

		above			
4	Local Economic Participation (attach utility bill, rates and taxes or lease agreement)	Service provider within Tshwane	3	5	15
		Service provider outside Tshwane but within Gauteng	2		
		Service provider outside Gauteng	1		
Total					100

#### 5.4 PREFERENCE POINT SYSTEM

The 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).

#### 6. VALIDITY PERIOD

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

#### 7. PRICING SCHEDULE

Bidders need to make proposal to the Municipality regarding the success fee structure that is beneficial to the municipality without placing undue additional burden on the budget of the municipality.

NB: Success fee will be Once off per property on additional revenue from the current billing will be paid to the service provider after securing payment from the customer whose property derived additional revenue.

Pricing	%
Commission\Success fee structure will be Once off per property upon the municipality securing payment from the Customer or property owner	

## 8. 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.

## 9. DRAFT SERVICE LEVEL AGREEMENTS

Specification to be accompanied by draft service level agreements

### 14.1 SERVICES PROVISION STANDARDS

14.1.1. The Service Provider shall provide the Services as set out in this Agreement at the standards expected of a diligent and expert service provider.

14.1.2. The provision of the Services shall be carried out at premises designated by the Service Provider in compliance with the laws and customs of the Countries and Provinces in which Services are conducted.

14.1.3. The Service Provider shall in all professional matters act as a faithful advisor to Municipality and, in so far as any of its duties are discretionary, act fairly between Municipality and third parties.

## 7. SCOPE OF SERVICE

### DESCRIPTION OF THE SERVICE

The terms of reference of this specification are to map out the requirements of the project by the City. The project is aimed at assisting the City of Tshwane with regards to maximising new property rates revenue in line with the Municipal Property Rates Act and the updating and data cleansing of data to ensuring that the City has a reliable data for budgeting purposes. Furthermore, to improve efficiencies in collecting revenue due and enhance the level of services offered to its customers.

### 2.1 Increased Property Rates Revenue

To achieve this, the City wants to partner with a reputable service provider which has extensive experience and knowledge in property rate revenue enhancement. The successful bidder will ensure:

- (a) completeness of property data and,

- (b) the generation of unbilled and incorrectly billed property rates revenue aligned to the Municipal Property Rates Act.

The bidders are requested to submit to the City innovative and proven solutions to maximise the property rates revenue of the City. Revenue Enhancement Solution must assist the City to effectively enhance property rates revenue and outline the process to update the data and database of the City.

The submitted proposals by the bidders are required to address the following aspects:

- (a) Recommendation on revenue and revenue management improvements.
- (b) Data cleansing to ensure effective revenue collection.
- (c) Identification of new revenue sources and mechanisms.
- (d) Identification of existing unlocked property rates revenue.
- (e) Management and maintaining of property rates revenue source.
- (f) Assist the Municipal Valuer in implementation of Section 78 of the Municipal Property Rates Act.
- (g) Innovative technology and system that identify property discrepancies and report such to the Municipality.
- (h) Speed of implementation (Project Plan)

7.1. Subject to the terms and conditions of this Agreement, the Service

Provider shall provide the following services:

Review of existing valuation roll

7.1.1 To check the completeness of the billing system

7.1.2 Correction of billing error and system

7.1.3 Review and determination of reasonable market values against valuation roll which will be in terms of section 78 of MPRA

7.1.4 Alignment of the billing tariffs with the billings

7.1.5 Alignment of billing with the individual property on the ground

7.1.6 Assessing the completeness of waste or refuse removal against all key resources

7.2. The Services to be delivered shall lie within the discretion of Municipality, as required by Municipality.

7.3. The Service Provider shall at all times ensure that it has the personnel required to provide the Services as set out in this Agreement.

7.4. From the Effective Date, the Service Provider shall provide the Municipality's Divisional Head and/or Director with a project report, which shall include a brief activity and progress report on the Services to be provided.

8. The Service Provider will verify the accuracy of Electricity and Water billed to the Municipality by third party service providers like Eskom and the Water Board where applicable. This will include aligning actual readings and agreed tariffs to amounts paid to Eskom and the Waterboard OBLIGATIONS

#### 8.1. Undertakings

8.1.1 Without derogating from the generality of clause 8.2, the performance of the Services by the Service Provider to Municipality shall be dependent upon the Service Provider meeting all requirements prescribed by Municipality as illustrated in the contract documents.

#### 8.2. Conduct

8.2.1 All Services to be rendered by the Service Provider to Municipality in terms of this Agreement must comply with all the reasonable instructions and the terms of reference for Implementation of Revenue Enhancement Project: Completeness of

Property Rates, Refuse Revenue & other Revenue Sources)

### 9 MUNICIPALITY'S OBLIGATIONS

#### 9.1 Information

The Municipality shall timeously provide to the Service Provider, free of cost, all information that may be reasonably required for the provision of the services. The Service Provider shall be entitled to rely on the accuracy and completeness of such information furnished by or on behalf of the Municipality.

#### 9.2 Decisions

The Municipality shall give his decision on all matters properly referred to him by the Service Provider in writing within a reasonable time so as not to delay the services or the contract.

#### 9.3 Assistance

The Municipality shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the services. The Municipality shall as soon as reasonably possible:

9.3.1 Authorizes the Service Provider to act as his agent as may be necessary for the performance of the services.

9.3.2 Provide all available maps, plans, record drawings and other relevant information.

9.3.3 Designate in writing a person to act with his complete authority to give instructions for and to receive information on his behalf.

### 10. PAYMENTS



10.1 The Municipality shall pay the appointed service provider a of the revenue enhanced, on realisation of actual Cash in the municipality bank account.

10.2 The Service provider shall be paid by the municipality for services rendered based on the agreed percentage from the revenue enhanced as accepted by the Municipality.

#### 10.3 Method of Payment

The total amount due to the Service Provider shall be paid in full on the agreed dates or within thirty (30) days of the date of receipt of any valid tax invoice.

#### 10.4 invoiced\Disputed Invoices

If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Municipality, the Municipality shall give notice before the due date of payment with reasons calling upon the Service Provider to review, reconsider and resubmit a new invoice for those disputed items. Undisputed items will be payable as per clause 10.3

The Service Provider shall refund excess amount. Should any dispute arise relating to the amount of the charges to which the Service Provider is entitled, such dispute shall be determined in accordance with the dispute resolution clause provided for this Agreement.

#### 10.5 Duty of Care

The Service Provider shall exercise reasonable professional skill, care and diligence in the performance of the services. The Service Provider shall do so promptly, effectively, efficiently and to the satisfaction of the Municipality's standards.

The Service Provider is required to submit written progress reports on a regular basis.

#### 10.6 Designated Representative

The Service Provider shall designate a suitable, experiences and qualified person possessing a professional liability who must accept professional responsibility for the project and or professional consulting services, such person shall act as his representative and shall have complete authority to receive instructions and to give information to the Municipality on behalf of the Service Provider.

#### 10.7 Co-operation with Others

The Service Provider shall perform the services in conjunction with any other Municipal functionaries and/or partners who may be providing services to the project. The Service Provider shall only be responsible for his own performance and the performance of his sub-contractors or specialists who have specifically been appointed by the Service Provider to assist him with the services.

#### 10.8 Notice of Change

On becoming aware of any matter which shall materially change or has changed the scope, cost or timing of the services or the works, the Service Provider shall give notice to the Municipality.

In case where the shareholdings of the company changes during the project, the municipality must be informed of such changes.

## 10.9 Cancellation, Sub-standard Services Penalties

The Service Provider undertakes to deliver the Services in accordance with professional, high-quality standards. In the event that the Service Provider should determine to cancel its Services for any reason other than Force Majeure, and/or

Should the municipality establish that that the Services is\are not in compliance in accordance with the conduct and standards as agreed to with the Service Provider, the Service Provider agrees that the damages Municipality would suffer as a result of those costs and the loss of Services and/or other ancillary revenue would be substantial. Accordingly, on such determination, Municipality will provide a written notice of the determined costs to the Service Provider, who shall within 5 (five) days, or any period as determined by Municipality, re-provide the Services at no cost to Municipality and to the satisfaction of Municipality. Any re-provision of Services shall be without prejudice to Municipality's rights to any claim of immediate, specific performance of all of the Service Provider's obligations as per this Agreement, to claim damages, or to terminate this Agreement.

## 11 STATUS OF SERVICES

11.1. Nothing contained in this Agreement or otherwise shall authorize, empower or constitute the Service Provider as an agent of Municipality in any manner; authorize or empower the Service Provider to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of or in the name of Municipality; or authorize or empower the Service Provider to bind Municipality in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of Municipality.

11.2. This Agreement is for the delivery of the Service Provider's

Services as specified under this Agreement and nothing in this Agreement shall be deemed or construed to create, or have been intended to create, a partnership, joint venture, employment, franchise, agency or other similar relationship between the Parties hereto. In furtherance of and without limiting the foregoing, the Service Provider shall not hold itself out to be Municipality and the Service Provider is not and shall not hold itself out to be or be deemed to be the legal representative or agent of Municipality, for any purpose whatsoever; and the Service Provider shall not act or bind Municipality in any way or represent that Municipality is in any way responsible for the Service Provider's acts or omissions.

## 12. PENALTIES

12.1. Should the Service Provider fail to deliver on any or all of the mandated

project within the period specified in the Service Level Agreement, the Municipality shall, without prejudice to its other remedies under the Agreement, deduct from the contract price, as penalty, a sum calculated on

the delivered price of the delayed goods or unperformed services using the current prime rate calculated for each day of the delay until the actual delivery and/or performance.

12.2. Penalties shall also be imposed on the following:

12.2.1. Poor quality of the deliverables

12.2.2. Non-compliance with the scope of work and any other tender documents requirements.

12.2.3. Any other misrepresentation or general poor performance on the part of the Service Provider.

12.3. The Municipality may, in addition to any other remedy it may have against the Service Provider:

12.3.1. Recover all costs, losses or damages it has incurred or suffered as a result of the Service Provider's conduct;

12.3.2. 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.

12.4. No extension will be granted for this Contract without good motivation and any failure to deliver the expected uniform before or on the specified deadline date will automatically results in penalties to be effected by the Municipality.

### 13. TERMINATION, CANCELLATION AND BREACH OF AGREEMENT

13.1. This Agreement will commence on the Effective Date and remain in full force and effect for the duration of the Agreement subject to Municipality's right of termination as provided for in clause 4 hereof and as provided in clause 11.

13.2. The Service Provider may terminate this Agreement by giving 30 (thirty) calendar days' notice to Municipality, provided that nothing shall preclude either Party from terminating this Agreement summarily for any cause recognized in law as sufficient.

13.3. Municipality may summarily terminate this Agreement if the Service Provider is liquidated, whether provisionally or finally; has an execution levied against its assets; is investigated or found guilty by any official prosecution/investigative authority in regards to fraud or dishonesty or any criminal act and/or civil liability.

13.4. Municipality may, by 14 (fourteen) days written notice of termination to the Service Provider, terminate this Agreement and claim damages or elect to enforce this Agreement if, in Municipality's sole discretion, the Service Provider:

- (i) has abandoned this Agreement or breached a material term or condition of this Agreement;
  - (ii) has breached any other term of condition of this Agreement and has failed to remedy the breach within a period of 14 (fourteen) days after receiving written notice of the breach from Municipality;
  - (iii) has persistently or flagrantly neglected to carry out its obligations under this Agreement;
  - (iv) has committed an act of gross negligence or incompetence;
- or
- (v) has assigned this Agreement or any part thereof without the consent in writing of Municipality.

13.5. Should this Agreement be terminated by mutual agreement between Municipality and the Service Provider, the obligations of Municipality shall be limited to the payment of such amounts of work done by the Service Provider, and failing such agreement shall not exceed such amounts as may be due and payable for Services rendered in compliance with this Agreement, up to the date that this Agreement is terminated.

13.6. Municipality's termination of this Agreement or any claim of immediate, specific performance of all of the Service Provider's obligations under this Agreement shall be without prejudice to Municipality's right to claim damages, or cancel the Agreement.

#### 14. CONFIDENTIALITY

The Service Provider warrants that all information made available to it by Municipality, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, will be kept as strictly confidential and will not be divulged to any third parties without the written permission of Municipality. The Service Provider and its employees, contractors or agents, will maintain the utmost secrecy in respect of all such information.

#### 15. MUNICIPALITY 'S INTELLECTUAL PROPERTY

15.1. Intellectual Property rights in material developed for Municipality in terms of the Services specified in the contract documents shall vest in Municipality. The Parties shall ensure that no infringements of whatsoever nature are made on the Intellectual Property rights and privileges of each other as relied on in this Agreement.

#### 16. CONTRACT MANAGEMENT

##### 16.1. Municipality

Municipality has assigned a Municipal Representative to co-ordinate and provide overall guidance in terms of strategy, policy standards and priorities as deemed appropriate for the provision of the Services by the Service Provider and as a first point of contact.

##### 16.2. Service Provider

The Service Provider will appoint a representative, who from the Effective Date, shall have overall responsibility for managing and coordinating the performance of the Service Provider's obligations under this Agreement and who will have the authority to act for and on behalf of the Service Provider in respect of all matters relating to this Agreement.

#### 17. REPORTING

17.1. Should Municipality require additional reports from the Service Provider regarding the contract, such reports shall be submitted to Municipality within a reasonable time frame of the Municipal request which in any event becomes (14 Fourteen) days.

#### 18. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

18.1. The Service Provider shall exercise all reasonable skill, care and diligence in the execution of

the Services and shall carry out all its obligations in accordance with international professional standards. The Service Provider shall in all professional matters act as a faithful advisor to Municipality and, in so far as any of its duties are discretionary, act fairly between Municipality and third parties.

18.2. The Service Provider hereby accepts liability for and indemnifies and holds Municipality harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses, or other liabilities, caused whether negligently or otherwise,

by the non-compliance of the Service Provider and/or its employees of their duties and obligations under this Agreement, in delict for breach of statutory duty or otherwise.

18.3. Municipality shall not be liable for any losses, damages, costs, claims and demands which the Service Provider may incur or sustain whilst carrying out or providing the tasks contemplated in this Agreement.

## 19. FORCE MAJEURE

19.1. If any Party is prevented or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.

19.2. Any Party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay has arisen.

19.3. The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party.

19.4. While any such prevention or delay continues, the Parties shall continue to comply with their obligations under this Agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its obligations under this Agreement to cancel this Agreement by giving written notice of such termination to the other Party.

19.5. For the purpose of this Agreement "Force Majeure" shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:

19.5.1. the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;

19.5.2. war, revolution, riots, mob violence, sabotage, epidemics, accidents, breakdown of machinery or facilities where such are not part of a Party's equipment or under a Party's control;

19.5.3. Industrial Action by workers, agents or employees;

19.5.4. Earthquakes, floods, fires or other natural physical disasters.

19.6. The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

## 20. ARBITRATION

20.1. In the event of any dispute or difference arising between the Parties out of, or in relation to, or in connection with this Agreement, or the interpretation thereof, or its termination, both while in force and after its termination, the Party claiming such dispute or difference shall, subject to any of its rights as per clause 13, forthwith advise the other in writing thereof. The dispute shall be referred to the applicable authorities of the Service Provider and Municipality who shall within 14 (fourteen) days of receipt of such notice, meet and negotiate in good faith in order to resolve such dispute or difference. Should the Parties fail to resolve such dispute or difference within 14 (fourteen) days of their first meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to expedited arbitration in Pretoria in accordance with the provisions of the Arbitration Foundation of South Africa (AFSA) or its successor in title, in terms of the Arbitration Act, Act No 42 of 1965 amended and as amplified or limited by this clause. , by a single Arbitrator appointed by AFSA, being a Senior Counsel of not less than 10(ten) years of experience practicing at the Pretoria Bar.

20.2. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

20.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

20.4. The arbitration shall be held:

20.4.1. In Pretoria or any other convenient place sanctioned by AFSA to be conducted in the English language;

20.4.2. Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.

20.4.3. The Parties irrevocably agree that the decision in arbitration proceedings:

20.4.3.1 shall be final and binding upon the Parties;

20.4.3.2 shall be carried into effect; and

20.4.3.3 may be made an order of any court of competent jurisdiction.

20.5. This clause is severable from the rest of this Agreement and will remain valid and binding on the Parties notwithstanding any termination of this Agreement.

## 21. DOMICILIA CITANDI ET EXECUTANDI

21.1. The Parties choose as their domicilium citandi et executandi for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

21.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. It shall be competent to give such notice by facsimile, if applicable.

21.3. Either Party may give notice to the other Party to change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa, provided that such change shall become effective on the 7th (seventh) day from the deemed receipt of the notice by the other Party.

21.4. Any notice sent by facsimile to the facsimile number stipulated in the domicilium citandi et

executandi, shall be deemed to have been received on the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the 7th (seventh) Business Day after posting, unless the contrary is proved.

21.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to the address chosen as the domicilium citandi et executandi.

## 22. SEVERABILITY

22.1. Each of the provisions of this Agreement shall be considered as separate terms and conditions and in the event that, this Agreement is affected by legislation or any amendment thereto, or if the provision herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.

## 23. COSTS

23.1. Each Party to this Agreement shall be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

## 24. ENTIRE AGREEMENT

24.1. This Agreement constitutes the entire contract between the Parties with regard to the matters dealt with in this Agreement and no representations, terms, conditions or warranties not contained in this Agreement will be binding on the Parties.

## 25. VARIATION AND CANCELLATION ORDER

25.1. No agreement varying, adding to, or deleting from or cancelling this Agreement will be effective unless reduced to writing and signed by or on behalf of the Parties.

## 26. INDULGENCES

26.1. No indulgences granted by Municipality shall constitute a waiver of any of its rights under this Agreement. Accordingly, Municipality will not be precluded as a consequence of having granted such indulgence, from exercising any rights against the Service Provider which may have arisen in the past or which may arise in the future.

## 27. GOVERNING LAW

27.1. Notwithstanding the place of signature, this Agreement will be construed, executed and delivered in accordance with the laws prevailing in the Republic of South Africa.

## 28. CESSION AND ASSIGNMENT

28.1. The Service Provider shall not be entitled to cede and assign its rights and obligations in terms of this Agreement without the written consent of Municipality.

29. CURRENCY

29.1. All prices and other currency amounts used in this Agreement are in South African Rand ("ZAR") unless expressly stated to the contrary.

30. CONTROLLING LANGUAGE

30.1. The original of this Agreement has been drafted and executed in the English language. This Agreement may be translated into any other language, but only this Agreement in the English language version shall be deemed the original document. If any conflict arises between the English version and any version in any other language into which this Agreement has been translated, the English language version shall have the controlling authority.



## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	GFS 05 -2021/22	CLOSING DATE:	01 December 2021	CLOSING TIME:	10:00
DESCRIPTION	<b>OFF-BALANCE SHEET REVENUE ENHANCEMENT SOLUTIONS WHICH INCLUDES, IDENTIFICATION OF PROPERTIES THAT ARE BILLED WITH INCORRECT RATES CATEGORIES, IDENTIFICATION OF PROPERTIES THAT ARE NOT IN THE GENERAL VALUATION ROLL AND BILLING SYSTEM, DATA CLEANSING AND MAXIMISATION OF PROPERTY RATES REVENUE IN LINE WITH MUNICIPAL PROPERTY RATES ACT FOR A PERIOD OF TWO YEARS (24 MONTHS) ON AS AN WHEN BASIS.</b>				
<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>Procurement Advice Centre at the entrance of C de Wet Centre</b>					
<b>Supply Chain Management</b>					
<b>175 Es'kia Mphahlele Drive,</b>					
<b>Pretoria West</b>					
<b>GPS coordinates: 25.750151°S, 28.173666°E</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		
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
<b>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		<b>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<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	Ndivhuwo Lithole	
CONTACT PERSON	Kgomotso Makgale		TELEPHONE NUMBER	(012) 358 3474	
TELEPHONE NUMBER	(012) 358 5478		FACSIMILE NUMBER	n/a	
FACSIMILE NUMBER	n/a		E-MAIL ADDRESS	<a href="mailto:NdivhuwoL@TSHWANE.GOV.ZA">NdivhuwoL@TSHWANE.GOV.ZA</a>	
E-MAIL ADDRESS	<a href="mailto:kgomotsomakg@tshwane.gov.za">kgomotsomakg@tshwane.gov.za</a>				

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</b></p> <p>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.</p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>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 <a href="http://WWW.SARS.GOV.ZA">WWW.SARS.GOV.ZA</a>.</p> <p>2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.</p> <p>2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>
<p>3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p><b>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.</b></p>

**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

MBD 3.2

**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. <b>Note that Pt must always be the original bid price and not an escalated price.</b>
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

## MBD 4

### 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, shareholder<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.

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. Will any portion of goods or services be sourced from outside 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?

**\*YES / NO**

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 **80/20** 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
<b>PRICE</b>	90
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	10
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 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 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);
- (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:

**80/20**

**or**

**90/10**

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

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 registration 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 .....

.....

.....

**CONTRACT FORM - RENDERING OF SERVICES**

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

**PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **GFS 05- 2021/22** 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 date of the 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);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - 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 services 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 .....

**CONTRACT FORM - RENDERING OF SERVICES**

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

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

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

**WITNESSES**

- 1 .....
- ...
- 2 .....

## 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:		
<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
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: **GFS 05 2021/22**

**TENDER FOR APPOINTMENT OF OFF-BALANCE SHEET REVENUE ENHANCEMENT SOLUTIONS WHICH INCLUDES, IDENTIFICATION OF PROPERTIES THAT ARE BILLED WITH INCORRECT RATES CATEGORIES, IDENTIFICATION OF PROPERTIES THAT ARE NOT IN THE GENERAL VALUATION ROLL AND BILLING SYSTEM, DATA CLEANSING AND MAXIMISATION OF PROPERTY RATES REVENUE IN LINE WITH MUNICIPAL PROPERTY RATES ACT FOR A PERIOD OF TWO (24 MONTHS) ON AS AN WHEN BASIS.**

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.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<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.



10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# **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**

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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**

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  
amendments**

18.1 No variation in or modification of the terms of the contract shall be made 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.

**26. Termination for insolvency**

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.

**27. Settlement of Disputes**

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,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) 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
- (b) 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.

**29. Governing language**

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.

**30. Applicable law**

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

**31. Notices**

- 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.

## **SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY  
AND**

\_\_\_\_\_

**Registration Number** \_\_\_\_\_

## 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 City of Tshwane in his capacity as City Manager duly authorised thereto under and by virtue of a resolution passed on 26 January 2012, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement.

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

**AND**

\_\_\_\_\_  
**Registration Number** \_\_\_\_\_

Herein represented by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ duly authorised thereto under and by virtue of a resolution of the Board passed on \_\_\_\_\_, a copy of which is annexed as “Annexure A”, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement

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

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## **RECORDAL:**

**WHEREAS** the City requires various services to be provided, or carried out and delivered at the service areas;

**AND WHEREAS** the City wishes to appoint the 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 the service provider 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 35 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 in clause 0 below;
- 1.8 **“Effective Date”** means notwithstanding the Signature Date, \_\_\_\_\_;
- 1.9 **“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;
- 1.10 **“Month”** means a calendar month;
- 1.11 **“Parties”** means City and Service Provider and “Party” means either of them as the context requires;
- 1.12 **“Services”** means services to be provided by the Service Provider to the City as detailed in clause 8 below;
- 1.13 **“Service Provider”** means \_\_\_\_\_, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number \_\_\_\_\_;



- 1.14 **“Signature Date”** means the date of signature of this Agreement by the Party signing last;
- 1.15 **“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;
- 1.16 **“Subcontractor”** means the third party with whom the Service Provider enters into a Subcontract;
- 1.17 **“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
- 1.18 **“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 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.6 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.
- 2.7 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, 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 \_\_\_\_\_ years, unless terminated earlier pursuant to clause 32 below.

### **7 CONTACT PERSON**

7.1 The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person referred to in clause 35 below.

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 handover and overlap takes place, at its cost, between the new and the encumbered Contact Person.

## **8 SCOPE OF GENERAL SERVICES**

The Service Provider shall, for the duration of this Agreement, provide the Services set out in the scope of work and in accordance with the deliverables and milestones attached hereto as Annexure B, including but not limited to the Maintenance and Support services as provided for in clause 20 below.

## **9 PRICE AND PAYMENT**

- 9.1 The City shall pay to the Service Provider the Contract Price in the sum of R\_\_\_\_\_ (\_\_\_\_\_rands) payable in accordance with the terms of the Appointment Letter, attached hereto as Annexure C, and subject to deliverables.
- 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 Where the payment of any valid and undisputed Tax Invoice, or any part of the said Tax Invoice which is not in dispute, is not made by the due date, the Service Provider shall be entitled to charge interest on the outstanding amount, at the Service Provider's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is fully paid.
- 9.6 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties.
- 9.7 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.
- 9.8 All Tax Invoices shall be addressed to the City' Contact Person.
- 9.9 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: \_\_\_\_\_

- 9.10 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.

## **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 8 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 32 below.

## **13 PENALTY**

13.1 Should the Service Provider fail to comply with its obligations in terms of this Agreement, the City may:

13.1.1 exercise its rights in terms of clause 31 below; alternatively

13.1.2 impose a penalty on the Service Provider.

13.2 An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.

13.3 Should the City elect to impose a penalty on the Service Provider, 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.

13.4 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 a penalty, which penalty shall be a deduction of 10% of the monthly Contract Price for the Contract Period; and for the avoidance of doubt, the penalty amount shall be 10% of the monies due for payment to the Service Provider monthly in terms of clause 9 above.

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 33 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 the City's premises.
- 14.2 The Service Provider is required to notify the 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 ORDERS OF GOODS**

- 15.1 The Service Provider's Contact Person shall advise the City, in writing, of the Goods required to enable the Service Provider to render the Services. In the order form, the Service Provider shall set out the quantity, description of Goods and the anticipated date of delivery of the Goods ("Delivery Date").
- 15.2 The City shall confirm the order in writing and authorise the Service Provider to order Goods necessary for the provision of the Service.
- 15.3 All orders for Goods ordered under this clause 15 shall be for the separate account of the City, the cost of which shall be invoiced to the City by the Service Provider upon confirmation of the order in terms of clause 15.2 above. The City shall not be obliged to order the Goods from the Service Provider and shall be entitled to utilise any company that it deems most suitable for the provision of the Goods.

## **16 DELIVERY OF GOODS**

- 16.1 The Service Provider shall deliver the Goods on the Delivery Date.
- 16.2 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.
- 16.3 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 one (1) month's written notice to terminate.
- 16.4 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:
  - 16.4.1 that the Goods were received in good condition;
  - 16.4.2 that the Goods were free of any defects;
  - 16.4.3 that the Goods were fit for the purpose for which they were purchased;  
and/or
  - 16.4.4 of any terms and conditions of the delivery document.
- 16.5 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.

## **17 DEFECTIVE GOODS / LATENT PRODUCTS**

- 17.1 The Service Provider shall verify whether the Goods received are in order and without any defects.
- 17.2 In the event that the City realises that the Goods have any defect, including but not limited to manufacture and/or latent defects, the City shall inform the Service Provider in writing within 5 (five) days of becoming aware of the defect ("Notice of Defect").
- 17.3 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 17.2 above and replace the defective Goods.
- 17.4 The cost of returning and replacing the defective Goods shall be borne by the Service Provider.
- 17.5 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.

## **18 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.

## **19 INSPECTION**

- 19.1 The City may at any time inspect the Goods and/or Services levels of the Service Provider in terms of this Agreement.
- 19.2 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.

19.3 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.

19.4 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 31 below.

19.4.1 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:

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

19.4.1.2 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;

19.4.1.3 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.

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

19.5.1 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.

19.5.2 Any information required to be provided to the City pursuant to this clause 19 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.

19.5.3 The cost of any inspection contemplated in terms of this clause 19 shall be for the account of the City unless any material irregularity or failure on the part of the Service Provider is determined by the City in the course of such inspection. 19.6 The inspection contemplated in this Agreement will be conducted:

19.6.1 during normal business hours;

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

## **20 MAINTENANCE AND SUPPORT**

The essential and critical elements of the Maintenance and Support to be provided by the Service Provider to the City shall be detailed in the scope of work attached hereto as Annexure B.

## **21 TRAINING**

If required, the Service Provider shall after delivery and installation of the Goods, and as part of Maintenance and Support, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the Goods.

## **22 SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES**

### **22.1 Service Warranties**

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

22.1.1.1 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;

22.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;

22.1.1.3 it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;

22.1.1.4 all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;

22.1.1.5 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;

22.1.1.6 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;

22.1.1.7 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;

22.1.1.8 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; ;

22.1.1.9 using and adopting any standards, processes and procedures required under this Agreement;

22.1.1.10 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;

22.1.1.11 free from any defects in material and workmanship;

22.1.1.12 maintaining and causing to be maintained the highest standard of workmanship and care in undertaking the Services and/or processing the Goods;

22.1.1.13 maintaining and caused to be maintained the highest standard of care and diligence in providing the Services, maintenance and support;

22.1.1.14 ensuring that all applicable laws are observed;

22.1.1.15 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;

22.1.1.16 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.

## **22.2 Indemnity**

22.2.1 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.

## **23 SERVICE PROVIDER'S PERSONNEL**

### **23.1 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.

## **23.2 Character of Employees**

23.2.1 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.

23.2.2 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.

23.3 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.

## **24 STATUTORY AND EMPLOYMENT ISSUES**

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

24.1.1 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.

24.1.2 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.

#### **24.2 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.

#### **24.3 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.

### **25 SUB-CONTRACTING**

25.1 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 consent of the City.

25.2 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.

- 25.3 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.
- 25.4 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:
- 25.4.1 the Service Provider shall ensure that the Subcontractor's 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;
  - 25.4.2 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;
  - 25.4.3 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
  - 25.4.4 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.

## **26 CONFIDENTIALITY**

- 26.1 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.

26.2 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.

26.3 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

26.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

26.3.2 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

26.3.3 The information was received from a third Party not in breach of an obligation of confidentiality.

## **27 INTELLECTUAL PROPERTY RIGHTS**

27.1 All Intellectual Property Rights of the Contractor and/or third party vest in the Contractor and/or third party, as appropriate.

27.2 All rights in the City name and logo remain the absolute property of the City.

27.3 The Contractor 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.

- 27.4 The Contractor 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.
- 27.5 In the event the City becomes aware of any such infringement, the Contractor 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 Contractor of such claim and the Contractor controls the defence thereof. The Contractor 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.
- 27.6 Should any claim be made against the City by any third party in terms of clause 27.1 above, the City shall give the Contractor written notice thereof within 3 (three) days of becoming aware of such claim to enable the Contractor to take steps to contest it.
- 27.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:
- 27.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
  - 27.7.2 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
  - 27.7.3 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
  - 27.7.4 withdraw the subject of infringement.

## **28 FORCE MAJEURE**

- 28.1 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.
- 28.2 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.
- 28.3 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").
- 28.4 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.
- 28.5 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give 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.

## **29 CESSION**

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.

### **30 CHANGE OF CONTROL / CIRCUMSTANCE**

30.1 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 (such change shall be considered a material change in the constitution and identity of the Service Provider. The City may terminate this Agreement upon becoming aware of such material change.

30.2 The Parties agree that should there be a change as envisaged in clause 30.1 above, the Service Provider will no longer exist and a new third party/entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the Service Provider's rights and obligations in terms of this Agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.

30.3 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.

### **31 BREACH**

31.1 Subject to clause 30.3 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:

- 31.1.1 immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or
- 31.1.2 request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or
- 31.1.3 impose penalties as provided for in clause 13 above.

## **32 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.

## **33 DISPUTES**

33.1 Save for clause 31 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:

- 33.1.1 the interpretation of the Agreement;
- 33.1.2 the performance of any of the terms of the Agreement;
- 33.1.3 any of the parties' rights and obligations;
- 33.1.4 any procedure to be followed;
- 33.1.5 the termination or cancellation or breach of this Agreement; or
- 33.1.6 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.



- 33.2 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 33 shall apply.
- 33.3 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").
- 33.4 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:
- 33.4.1 at any place which the Parties agree, in writing, to be mutually convenient.
  - 33.4.2 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.
- 33.5 If the arbitration is:
- 33.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;
  - 33.5.2 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing;
  - 33.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

- 33.6 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.
- 33.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature. 33.8 The arbitrator may:
- 33.8.1 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;
  - 33.8.2 interview and question under oath the parties or any of their representatives;
  - 33.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and
  - 33.8.4 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 thirty (30) days after it has been so requested.
- 33.9 The arbitrator's decision and award shall be in writing with reasons and shall be subject to appeal by either Party.
- 33.10 Subject to the provisions of clause 33.9 above, 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.
- 33.11 Notwithstanding the provisions of clauses 33.1, 33.2, 33.3, 33.4, 33.5, 33.6 and 33.7 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 documents, 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.

33.12 The provisions of this clause 33 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

## **34 LAWS AND JURISDICTION**

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

34.2 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)).

## **35 NOTICES AND COMMUNICATIONS**

35.1 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 the 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:

### **35.1.1 THE CITY:**

Tshwane House  
2nd Floor, Block D  
320 Madiba Street Pretoria, 0001  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Fax: 086 214 9544

Email: \_\_\_\_\_

**35.1.2 THE SERVICE PROVIDER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

35.2 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.

35.3 Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:

35.3.1 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;

35.3.2 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.

35.3.3 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.

35.4 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.

35.5 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*.

## **36 GENERAL AND MISCELLANEOUS**

### **36.1 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.

### **36.2 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 the relevant party to be of any effect.

### **36.3 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.

### **36.4 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.

#### **36.5 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.

### **37 EXECUTION**

- 37.1 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.
- 37.2 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.....

Witnesses

1. ....

2. ....

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

(Duly represented by **Ms Mmaseabata  
Mutlaneng**)

Signed at ..... on this ..... day of ..... 20.....

Witnesses

1. ....

2. ....

For and on behalf of

\_\_\_\_\_  
\_\_\_\_\_

(duly represented by  
\_\_\_\_\_  
\_\_\_\_\_)

## **ANNEXURE “A”**

### **RESOLUTION OF THE BOARD**

Resolution by the Board of Directors of

\_\_\_\_\_ (the “Company”) made at a meeting held  
at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_.

**NOTED: THAT** \_\_\_\_\_ intends to enter into an Agreement with the City of Tshwane Metropolitan Municipality in terms of which the Company shall provide various services (the “Agreement”) on the terms and subject to the conditions of the Agreement to which this resolution is attached as Annexure “A”.

#### **RESOLVED:**

**THAT** the Company approves and enters into the Agreement on the terms and subject to the conditions of the Agreement to which this resolution is attached.

**THAT** \_\_\_\_\_ in his/her capacity as a \_\_\_\_\_ of the Company, be and is hereby authorised to negotiate, settle and sign the Agreement attached hereto, and to sign all documentation and do all things necessary to give effect to the aforesaid resolutions on behalf of the Company.

\_\_\_\_\_

**Read and Confirmed**

**Chairman/Company Secretary**