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1. DEFINITIONS

1. The following terms shall be interpreted as indicated:

- 1.1 'Business Process/Standard Operating Procedure' means the operating procedure framework which will govern the daily and monthly procedures relating to the scope of service between the service provider and CTS.
- 1.2 'Cape Town Stadium / CTS' means Cape Town Stadium (RF) SOC Ltd
- 1.3 'Closing time' means the date and hour specified in the bidding documents for the receipt of bids.
- 1.4 'Contract' means the written agreement entered into between the seller and The Service Supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.5 'Contract price' means the price payable to the seller under the contract.
- 1.6 'Contract commencement' means the signing of the contract.
- 1.7 '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.
- 1.8 'Conference Areas' means the conference areas in the stadium.
- 1.9 'Day' means calendar day.
- 1.10 'Delivery' means delivery in compliance with the conditions of the contract.
- 1.11 'Delivery of stock' means delivery of products/food and drinks in terms of approved Event Management Plan.
- 1.12 'Delivery into consignee's 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, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.13 'Environmental packaging' means packaging that is designed to be eco-conscious which uses products and materials that can be easily recycled and is safe for both the environment and people. Ideally, green packaging will use both renewable and recycled material.
- 1.14 'Event Management Plan' " means the Event Organiser plan, which forms part of the event specific Event Safety and Security Plan contemplated in Section 16 of SASREA, which the Event Organiser must compile and execute in respect of every event hosted at the Stadium
- 1.15 'Fees' means all fees including Annual Rights Fees and Turnover Fees.
- 1.16 'Force majeure' means that neither party is responsible for any failure to perform its obligations under this contract. Such events may include, but are not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.17 '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.
- 1.18 'Hospitality and/or Conferencing Plan' means the planning document the SP provides specifically to the service/product they will provide and will fall part of the overall Events Management Plan
- 1.19 'Hospitality Area' means any area or space demarcated for the preparation of food as referred to or any additional area as per CTS footprint as approved by the delegated authority.
- 1.20 'Incident' means any undesirable occurrence which may take place in the provision of the Service such as accidents involving people.
- 1.21 'ME' means Municipal Entity run by the Board of Non-Executive Directors

- 1.22 'Period' means the initial contract period as mentioned in the document.
- 1.23 'Products' means all products supplied to the CTS in terms of this Contract.
- 1.24 'Property' means the Stadium and surrounding areas under the control of the Seller.
- 1.25 'Qualifying Small Enterprises (QSEs) ' Means a qualifying business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerments Act
- 1.26 'Regulations in terms of Food Industry' means Requirements in terms of the Food Industry as indicated in Annexure 3
- 1.27 'Resources Infrastructure' means the people, equipment, tools, finance, etc. necessary to provide the Service described in this document.
- 1.28 'Republic' means the Republic of South Africa.
- 1.29 'SASREA' means Safety at Sports and Recreational Events Act
- 1.30 'Seller' means Cape Town Stadium (RF) SOC Ltd
- 1.31 'Seller/CTS' means the Cape Town Stadium SOC (RF) Limited. The address of the Seller is: Fritz Sonnenberg Road, Green Point, 8051
- 1.32 'Service Supplier' means the successful bidder appointed by the Seller.
- 1.33 'SMME Companies' means SMME stands for Small Medium Micro Enterprise. SMME are companies that are below R5 million turn over per annum, this is the standard for generic broad-based BEE scorecard purpose.
- 1.34 'Supplier Designated Areas' means the Hospitality Area, the Trading Floor Area and Conference Areas.
- 1.35 'Tender document' means the tender document and proposal submitted by The Service Supplier in response to the Cape Town Stadium's invitation to tender no 163I/2020/21
- 1.36 'This Document' means the Tender Document; Contract Document; Agreement: The combined and total document, including all sections listed in the Index and which forms the tender document during the tender period and will form the basis of a formal contractual agreement between the successful or winning bidder and the Cape Town Stadium.
- 1.37 'Trading Floor Area' means any assigned area for seating and/or consumption of edible goods, beverages and products.
- 1.38 'Turnover Fees' means the percentage of the sales turnover due by the Service Supplier to CTS.
- 1.39 'VAT' means the tax, known as Value Added Tax, which is required to be levied and paid for the benefit of the National Revenue Fund in terms of Section 7 of the Value Added Tax Act, 1991, as amended.
- 1.40 'Written' or 'in writing' means handwritten in ink or any form of electronic or mechanical writing.
- 1.41 'Vendor/Service Provider' means a person or company who provides a product to sell on behalf of The Service Supplier

2. GENERAL

- 2.1 Unless otherwise indicated in the bidding documents, the seller 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.
- 2.2 The parties will be liable to each other arising out of or in connection with any breach of the obligations detailed or implied in this contract, subject to clause 15.
- 2.3 All parties in a joint venture or consortium shall be jointly and severally liable to the Seller in terms of this contract and shall carry individually the minimum levels of insurance stated in the contract, if any.
- 2.4 The parties shall comply with all laws, regulations and bylaws of local or other authorities in terms of the food

and liquor industry.

2.5 The Service Provider shall:

2.5.1 Arrange for the documents listed below to be provided to the CTS prior to the issuing of the letter of appointment, per event:

- a) Proof of Insurance (Refer to Clause 13) or Insurance Broker's Warrantee
- b) Letter of good standing from the Compensation Commissioner, or a licenced compensation insurer (Refer to Clause 10.7)
- c) Other requirements as detailed in the tender documents

3. RIGHTS

3.1 The Service Supplier shall indemnify the CTS against all third-party claims of whatsoever nature in respect of any infringement of patent, trademark, or industrial design rights or any similar rights arising from the use of the Products or any part thereof at the Property.

4. PAYMENT

4.1 The payments by the Service Supplier to the Seller will be subject to VAT

4.2 Payment shall be made by the Service Supplier in South African currency (Rand).

4.3 Annual Rights Fee will be paid quarterly in advance and payable to the Seller within 30 days of date of invoice. The first payment in terms of the Annual Rights fee is due and payable within 30 days of signing the Contract.

4.4 Turnover Fee will be reconciled and determined in consultation with the Service Supplier, by the Seller which shall thereafter invoice the Service Supplier. After being submitted with the reconciliation, the Service Supplier will have 10 working days in which to respond to the Seller. If no objection is received, then the Seller will deem the reconciliation as accepted and proceed to invoice the Service Supplier.

4.5 Payment of the Turnover Fee and the penalties are due and payable to the Seller within 7 days of date of invoice.

4.6 Payments must be made to the credit of the Cape Town Stadium (RF) SOC Ltd without any deduction or set-off. Unless otherwise provided in this agreement

4.7 The Seller reserves the right to set-off any non-disputed amounts owed to it by the Service Supplier

4.8 All payments are payable by the Service Supplier to the Seller by electronic transfer (EFT) or by direct deposit into a bank account of the CTS, with the following particulars:

NEDBANK LTD

CHEQUE ACCOUNT

BRANCH CODE 198 765

ACCOUNT NO 1151 5690 38

NAME OF ACC CAPE TOWN STADIUM (RF) SOC LTD.

REFERENCE **Invoice**

5. PRICES

5.1 The Fees due and payable to the Seller shall not vary from the rate offered in the Pricing Schedule.

5.2 Financial contributions / Prices tendered below shall be FIRM in terms of volume discount on wholesale prices per category for the duration of the contract. The Annual Rights Fee will be fixed for the first 12 months and shall increase annually by CPIX on the anniversary date until completion of the Contract.

6. INTEREST ON OVERDUE PAYMENTS

If the amount due by the Service Supplier to the Seller in terms of this Agreement is not paid when due, the overdue amounts will bear interest at the rate of 2% above the prime overdraft rate charged by the Seller's bankers, compounded monthly. Such interest will be calculated from the due date of payment and will be paid together with the overdue payment concerned.

7. PENALTIES

No	Description	Due date	Fine
7.1	Non-compliance/deviation of approved Event Management Plan.	Pre event Event Post event	R2 000 per deviation from plan
7.2	Failure to submit the necessary Hospitality Plan.	Pre event Event	R2 000 per event
7.3	Late submission of the necessary Hospitality Plan.	Pre event	R2 000 per day

Service Supplier forfeits his concession rights for an event if an acceptable plan is not submitted within 5 days before the event, or within the timeframe agreed upon with CTS.

8. USE OF HOSPITALITY AREA/TRADING FLOOR AREA

- 8.1 The Service Supplier shall only use the Stadium area and areas in the Property as approved by the CTS in writing.
- 8.2 The Service Supplier shall comply with and not contravene, or permit the contravention of any:
 - 8.2.1 Law;
 - 8.2.2 By-law;
 - 8.2.3 Ordinance;
 - 8.2.4 Proclamation;
 - 8.2.5 Statutory regulation;
 - 8.2.6 Condition of any license, including liquor license, relating to the occupation or carrying on of any business on the Property;
 - 8.2.7 Title deed restrictions or conditions applicable to the Property; and/or
 - 8.2.8 Occupational Health and Safety Act 85 of 1993;
 - 8.2.9 Any other legislation, regulations, enactment or prescription of any authority which applies to the Property and/or Hospitality Area/Trading Floor Area or which the CTS is required to observe as a result of the lease or occupation of the Property.

9 FIRE PROTECTION

- 9.1 The Service Supplier must ensure that any additional fire appliances are provided / catered for as required by the National Building Regulations and Building Standards Act, 1977, as amended, relating to fire protection. In particular, the Service Supplier must abide by Regulation T1 (General Requirements) and Regulation T2 (Offences).
- 9.2 The Service Supplier must also maintain, repair and service the fire appliances on the Hospitality Area/Trading Floor Area, where it trades, and as required by the relevant legislation in terms of any additional appliances.

- 9.3 The Service Supplier will at all times obey the lawful instructions of and allow inspection by the Fire Protection Services of the CTS or any other responsible authority which ensures compliance with the applicable fire legislation and regulations, as amended, and will provide its general co-operation at all times.
- 9.4 The Service Supplier indemnifies the CTS against any claim of whatsoever nature which may be made against the CTS arising either directly or indirectly from the Service Supplier's non-compliance with the applicable fire protection legislation, regulations and instructions.

10.OCCUPATIONAL HEALTH AND SAFETY

- 10.1 The Service Supplier shall ensure compliance with the provisions of the Occupational Health and Safety Act 85 of 1993 and all applicable regulations, by all employees of the Service Supplier and other contractors on the site. The Service Supplier shall provide a suitable health and safety plan appropriate for the contract tendered for. Where the size and type of concession does not justify a dedicated health and safety plan, the Service Supplier shall be subject to the health and safety plan that applies to the stadium Hospitality Area/Trading Floor Area. (See Annexure 3 and 8)
- 10.2. The Service Supplier undertakes to complete, prior to the Commencement date, the Occupational Health and Safety Agreement, marked **Schedule 9**.
- 10.3 The Service Supplier acknowledges that for the purposes of the provisions of the Occupational Health and Safety Act, that he shall be deemed to be an employer in his own right.
- 10.4 The Service Supplier agrees to adhere to the safety plan and to fully comply with all requirements in terms of this plan including participation in evacuation and emergency procedures.
- 10.5 The Service Supplier, by completing Schedule 10 of the invitation to tender, hereby indemnifies the CTS in respect of the provisions of the Occupational Health and Safety Act, Act 85 of 1993 ('OHAS Act'), in accordance with the provisions of the OHAS Act.
- 10.6 The Service Supplier shall comply with all laws relating to wages and conditions generally governing the employment of labour in the Cape Town area and any applicable Bargaining Council agreements.
- 10.7 If the Service Supplier is an employer as defined in the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993 ('COIDA'), the Service Supplier shall attach proof of registration/insurance in terms of COIDA. This may take the form of either a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the Service Supplier's broker or the insurance company itself.
- 10.7.1 The Service Supplier and all the vendor's/service providers are to undergo a Stadium formal induction where the Service Supplier will have a register available and all attendees to sign acceptance of conditions.
- 10.8 The safety file and the maintenance thereof will be the responsibility of the Service Supplier in accordance with CTS appointed Safety Representative Requirements.
- 10.9 It will be the responsibility of The Service Supplier to ensure that all his Vendors meet all the above requirements.

11.CAPE TOWN STADIUM (RF) SOC LIMITED LIABILITY

- 11.1 Without detracting from, and in addition to, any of the other indemnities in this Contract, the Service Supplier shall be solely liable for and hereby indemnifies and holds the CTS harmless against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with:
- 11.1.1 personal injury, loss of life to any individual arising from, out of, or in connection with the provision by the Service Supplier in terms of this Contract, save to the extent caused by the gross negligence or willful misconduct of the CTS;
- 11.1.2 loss of or damage to the property of CTS, the Property, or of any person on the Property arising from, out of, or in connection with the provision of services by the Service Supplier in terms of this Contract, save to the extent caused by the gross negligence or willful misconduct of the CTS;
- 11.2 The Service Supplier and/or its employees, agents, vendors, suppliers, contractors or customers shall not have any claim of any nature against the CTS for any loss, damage, injury or death which any of them may

directly or indirectly suffer, whether or not such loss, damage, injury or death is caused through the negligence of the CTS or its agents or employees.

Notwithstanding anything to the contrary contained in this Contract, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall the CTS or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever (whether the loss was actually foreseen or reasonably foreseeable) sustained by Service Supplier, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information, loss of contracts or consequential losses.

12. INDEMNITY

- 12.1 **Risk Management and Insurance taken out by Service Supplier** must, in respect of the occupied space, make sure that:
- 12.1.1 The risks inherent in retailing operations are managed,
 - 12.1.2 The Hospitality operations cause no damage and, if they do unintentionally cause damage, the damage is repaired by the CTS at the cost of the Service Supplier., and
 - 12.1.3 The adequate insurance as approved by CTS is in place to cover:
 - a. Service Supplier's vendor's liability insurance.
 - b. All on-site assets / equipment of the Service Supplier.
 - 12.1.4 It is expressly recorded and agreed that any loss or damage to the Supplier Designated Area, and any equipment of the Service Supplier, as a result of vandalism or other wilful or accidental damage shall be the responsibility of the Service Supplier, who shall be obliged to repair and/or replace such lost or damaged assets at its own cost, and shall not be entitled to claim such costs from the Cape Town Stadium in terms of this contract.
 - 12.1.5 The Service Supplier shall take all reasonable measures to mitigate the risks that fall within the knowledge of the Service Supplier or should have reasonably fallen within its knowledge and attention.
 - 12.1.6 The Service Supplier hereby indemnifies the CTS against any claims from their service providers against the CTS for losses such service providers have sustained.
 - 12.1.7 The Service Supplier's indemnity will not extend to acts or omissions which are attributable to the gross negligence on the part of the CTS, or anyone acting on its behalf.

13. INSURANCE

- 13.1 Without limiting the obligations of the Service Supplier in terms of this contract, the Service Supplier shall effect and maintain the following additional insurances:
- a) Public liability insurances, in the name of the supplier, covering the supplier and the Seller against liability for the death of or injury to any person, or loss of or damage to any property, arising out of or in the course of this Contract, in an amount not less than **R20 million** for any single claim;
 - b) Motor Vehicle Liability Insurance, in respect of all vehicles owned and / or leased by the supplier, comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity;
 - c) Registration / insurance in terms of the Compensation for Occupational Injuries and Disease Act, Act 130 of 1993. This can either take the form of a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the bidder's broker or the insurance company itself (see **Proof of Insurance / Insurance Broker's Warranty** section in document for a pro forma version).
 - d) Submit an Occupational Health and Safety plan taking the CTS requirements in terms of food industry into account. (See Annexure 3 and 9)
- 13.2 The Service Supplier shall be obliged to furnish the CTS with proof of such insurance as the CTS may require from time to time for the duration of this Contract. Evidence that the insurances have been effected

in terms of this clause, shall be either in the form of an insurance broker's warranty worded precisely as per the pro forma version contained in the **Proof of Insurance / Insurance Broker's Warranty** section of the document or copies of the insurance policies.

- 13.3 The Service Supplier will be obliged, at its own cost, to:
- 13.3.1 Ensure that adequate insurance cover is in place in respect of any damage or loss whatsoever which may occur on the Hospitality Area/Trading Floor Area, or to its visitors or employees;
- 13.3.2 Ensure that adequate plate glass insurance cover is in place in respect of any and all plate glass on the Hospitality Area/Trading Floor Area (if any);
- 13.3.3 Ensure that adequate public liability insurance cover is in place with a reputable insurer in order to indemnify all claims against the Service Supplier due to any act or omission which may occur on the Supplier Designated Area.

14.SETTLEMENT OF DISPUTES

- 14.1 If any dispute or difference of any kind whatsoever arises between the Service Supplier and the CTS 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.
- 14.2 The CEO of the CTS shall appoint an impartial person in terms of Regulation 49 of the Supply Chain Management Regulations, to resolve the dispute should the Parties be unable to resolve it in terms of 14.1 above.
- 14.3 Should it not be possible to settle a dispute in terms hereof, the Parties may proceed to resolve the dispute/breach in terms of the Contract.
- 14.4 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 Service Supplier shall pay the CTS all monies due to CTS.

15.BREACH

- 15.1 Failure to pay any Fees:
- 15.1.1 If the Service Supplier fails to pay any Fees or any other amount due by it to the CTS on the due date ("**the Outstanding Amount**"), the CTS must give the Service Supplier 7 (seven) days' written notice requiring payment.
- 15.1.2 If the Outstanding Amount remains outstanding for more than 7 (seven) days after receipt of a written notice from the CTS requiring payment, then the CTS may deliver a written notice of termination of the Contract ("**the Termination Notice**").
- 15.1.3 Failure to comply with the standards and Specifications as set out in the invitation to tender document shall constitute a material breach of this Contract, in which case the CTS reserves the right to cancel the Contract without notice and reserves its rights to claim damages against the Service Supplier.

- 15.2 Other breach

The CTS will also be entitled to terminate this Contract in the following circumstances:

- 15.2.1 If the Service Supplier breaches any provision of this Contract, other than that dealt within clause 20.1 above, and fails to remedy such breach within 7 (seven) days from receiving written notice by the CTS requiring that such breach be remedied;
- 15.2.2 If the Service Supplier is cited as the subject of any provisional or final liquidation, sequestration, judicial management proceedings or business rescue proceedings;
- 15.2.3 If the Service Supplier convenes a meeting of its members/creditors to consider the passing of a resolution to place it in voluntary liquidation;

15.2.4 If the Service Supplier attempts to effect any compromise with its creditors, apart from in the course of a reconstruction or amalgamation; and/or

15.2.5 If the Service Supplier commits any act of insolvency,

Then the CTS may deliver the Termination Notice to the Service Supplier.

15.3 The Termination Notice will be without prejudice to any other claim the CTS may have against the Service Supplier including the right to claim damages due to such breach and/or termination.

15.4 Service Supplier Disputes Termination

15.4.1 If the Service Supplier disputes the Termination Notice and continues to remain in occupation of the Supplier Designated Area pending the determination of the dispute, the following provisions will apply:

15.4.1.1 The Service Supplier will continue to make all payments in terms of this Contract on the due date;

15.4.1.2 The acceptance by the CTS of such payments will be without prejudice to the CTS's rights to terminate this Contract or any other rights in favour of the CTS;

15.4.1.3 If any dispute between the CTS and the Service Supplier is determined in favour of the CTS, then payments made to the CTS in terms of clause 4 above will be regarded as amounts paid by the Service Supplier as damages due to the termination of this Contract and/or the unlawful holding over of the Supplier Designated Area.

15.4.1.4 The Service Supplier shall be liable for all reasonable costs incurred by the CTS in enforcing any of its rights in terms of this Agreement.

15.4.1.5 The CTS will be entitled to appropriate any amounts received from the Service Supplier towards payment of any debt or amount owing by the Service Supplier to the CTS.

15.5 Parties' Rights and Obligations on Termination

15.5.1 If this Contract terminates for any reason, the CTS will be entitled to remove and/or deal as it deems reasonably fit with any possessions of the Service Supplier remaining in or on the Hospitality Area/Trading Floor Area.

15.5.2 The Service Supplier will be responsible for any loss, damage or cost directly, indirectly suffered, or incurred by the CTS due to the Service Supplier's possessions remaining in or on the Supplier Designated Area following termination of the Agreement.

15.5.3 The Service Supplier does not have the right to remove any of its possessions on the Supplier Designated Area in order to reduce the value of the CTS's hypothec for any amount remaining due by the Service Supplier in terms of this Agreement.

15.6 If the Service Supplier fails to fulfil or perform any of its obligations under this Agreement, the CTS will be entitled to perform such obligations on the Service Supplier's behalf and at the Service Supplier's expense.

15.7 The CTS shall be entitled to claim any amount spent on the Service Supplier's behalf in order to perform the Service Supplier's obligations under this Agreement, together with interest calculated at the same rate and on the same basis as provided for below. The Service Supplier will calculate penalty interest from the date on which the CTS incurred the expense to date of payment by the Service Supplier, both days inclusive.

15.8 The CTS will be entitled to recover from the Service Supplier any and all costs which it may incur in enforcing its rights in terms of this Agreement. These costs will include, but will not be limited to, legal costs on the attorney-client scale.

16.COMPLIANCE WITH REQUIREMENTS

16.1 The Service Supplier will ensure that the required licenses and permits are obtained in order to exercise its rights in terms of this Contract. The required licenses and permits will be obtained before the Service Supplier or its vendors, sub-lessees or assignees commences trading on the Supplier Designated Area.

16.2 The Service Supplier will ensure compliance with all of the reasonable requirements of the CTS in order to obtain the necessary licenses and permits.

- 16.3 The Service Supplier is responsible to effect whatever alterations and/or additions to the Hospitality Area/Trading Floor Area are required in order to comply with relevant legislation applicable to the Service Supplier or its vendors, sub-lessees or assignees' business and activities conducted on and from the Supplier Designated Area. Any such alterations and/or additions must be made in consultation with and with the written approval of CTS.
- 16.4 The Service Supplier cannot effect such alterations and/or additions unless the relevant plans, specifications and building contracts have first been submitted to the CTS for consideration and approval.
- 16.5 The Service Supplier understands that such plans specifications and building contracts normally require approval of the City of Cape Town and the CTS.
- 16.6 No further alterations and/or additions to the Supplier Designated Area, other than those required in terms of clause 16, can be undertaken by the Service Supplier without the prior written consent of the CTS. Such consent will not be unreasonably withheld by the CTS.
- 16.7 If any relevant law requires plans and/or specifications to be passed so that the Service Supplier approved alterations and/or additions may be effected, the Service Supplier must submit these plans and/or specifications to the City of Cape Town and the CTS.
- 16.8 The Service Supplier will be responsible for the costs of all approved alterations and/or additions to the Supplier Designated Area.

17.ESCALATION

- 17.1 As per Returnable Schedule 8

18.DELIVERY AND DOCUMENTS

- 18.1 Delivery of the service shall be made by the Service Supplier in accordance with the terms specified in the contract.

19.RENEWAL OF CONCESSION

- 19.1 No automatic renewal option is granted in terms of the Contract.
- 19.2 The CTS may, at its own discretion, agree with the Service Supplier to extend the Period of the Contract, on the terms and conditions as may be agreed between the Parties and subject to compliance with relevant legislation and policies.
- 19.3 Any agreement to extend the Period of the Contract beyond the expiry date must be concluded in writing and signed by the Service Supplier and the CTS, or their authorised representatives.

20.TERMINATION

- 20.1 CTS reserve the right and shall be entitled to terminate the Contract within 3 months if an acceptable Business Process/Standard Operating Procedure is not signed and agreed upon between CTS and the Service Provider within the first 3 months following the Commencement Date.
- 20.2 CTS Party may terminate this Contract at any time by providing three months' written notice to the other Party. This provision does not remove the rights that the Parties may have under any other legislation which take preference over this Contract.
- 20.3 After expiry of the Period of the Contract or on termination of this Agreement the Service Supplier shall at the discretion of the CTS, immediately return the Hospitality Area/Trading Floor Area to the CTS in good order and condition, fair wear and tear excepted: -
- 20.3.1 To the extent that improvements have been made by the Service Supplier, the Service Supplier will be responsible, at the discretion of the CTS, demolishing/dismantling such improvements and all shop fittings; the removal of counters and furniture and for reinstating the Hospitality Area/Trading Floor Area to the condition found on the Commencement Date.
- 20.3.2 To the extent that the CTS provided the improvements, the Service Supplier must remove at its cost all shop-fitting components and make good the Supplier Designated Area to the condition found on the Commencement Date.

- 20.4 The CTS may at any time terminate the contract by giving written notice to the Service Supplier if the Service Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Service 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 CTS.
- 20.5 Upon the death of the Service Supplier who was a Sole Proprietor, or a sole member of a Close Corporation, the contract will terminate forthwith. The CTS shall pay to the bidder's estate any money which it considers due under the Contract.
- 20.6 Notwithstanding the provisions of clauses 26 and 21 of this Agreement, the Service Supplier shall not be liable for damages or termination if and to the extent that it is delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure.
- 20.7 If a force majeure situation arises, the Service Supplier shall promptly notify the CTS in writing of such condition and the cause thereof. Unless otherwise directed by the CTS in writing, the Service Supplier shall continue to perform its obligations under this Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

21. JURISDICTION OF THE MAGISTRATE'S COURTS

- 21.1 The Parties to this Agreement consent in terms of Section 45 of the Magistrate's Court Act, 32 of 1944, as amended, in respect of any action or proceeding arising out of or in connection with this Agreement, to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Sections 28 and 29 of the said Act.
- 21.2 Whilst the Parties consent to the jurisdiction of the Magistrate's Court, in terms of Section 45 of the Magistrate's Court Act, nothing prevents either Party from instituting proceedings out of the High Court, having jurisdiction.

22. WHOLE AGREEMENT, WAIVER AND VARIATION

- 22.1 This agreement embodies the whole agreement between the Parties. No other agreement, whether oral, implied or otherwise, will be of any force and effect unless it is reduced to writing and signed by the Service Supplier and the CTS, or their duly appointed representatives. There has been no representation which forms part of this agreement which has not been included herein.
- 22.2 Any relaxation, indulgence or waiver which the CTS may grant to the Service Supplier or any condonation by the CTS of any breach of the terms of this Agreement will not become binding on the CTS. The CTS will at all times be entitled to claim due and prompt performance by the Service Supplier of all of the Concession's obligations in terms of this Agreement.
- 22.3 No variation of the terms of this Agreement will be of any force or effect unless reduced to writing and signed by the Service Supplier and the CTS, or their duly appointed representatives.

23. NOTICES AND APPOINTED ADDRESSES

- 23.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses specified in the contract and may be given as set out hereunder and shall be deemed to have been received when:
 - a) hand delivered – on the working day of delivery
 - b) Sent by email– one (1) working day after transmission
- 23.2 The Service Supplier appoints the following address as the place at which it will accept all notices required in terms of this Agreement (also known as the Service Supplier's *domicilium citandi et executandi*):

Physical Address:

.....
.....

Attention:

- 23.3 The CTS appoints the following address as the place at which it will accept all notices required in terms of this Agreement (also known as the CTS's *domicilium citandi et executandi*):

Physical Address:

Cape Town Stadium (RF) SOC Limited

Fritz Sonnenberg Rd,

Green Point,

Cape Town,

Attention:

- 23.4 Any notice required to be given in terms of this Agreement will be deemed to have been received as if notice is delivered by hand at the address appointed by the relevant Party in terms of clause 24.1 above, the notice will be deemed to have been received on the date of delivery if that day is a business day. If that day is not a business day, the notice will be deemed to have been received on the following business day.

24. PROHIBITION

- 24.1 In terms of section 4 (1) (b) (iii) of the Competition Act, Act 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).
- 24.2 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, Act 89 of 1998.
- 24.3 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 10 (ten) years and/or claim damages from the bidder(s) or contractor(s) concerned.

25. GOVERNING LANGUAGE

- 25.1 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.

26. APPLICABLE LAW

The contract shall be interpreted in accordance with South African laws, unless otherwise specified in the Special Conditions.

27. TAXES AND DUTIES

- 27.1 In this regard, it is the responsibility of the concessionaire to submit documentary evidence in the form of a valid Tax Clearance Certificate issued by SARS to the COCT at the Supplier Management Unit located within the Supplier Management / Registration Office, 2nd Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5).
- 27.2 The **VAT registration** number of the CTS is **4640 2890 98**

28. SUBCONTRACTS

- 28.1 The supplier shall notify the Seller in writing of all subcontracts awarded under this Contract 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.

29. ESTABLISHMENT OF A FULLY COMPLIANT DISTRIBUTION FACILITY INCLUSIVE OF SERVICES AND PRODUCTS AS SPECIFIED WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE CITY OF CAPE TOWN, WITHIN SIXTY (60) DAYS FROM COMMENCEMENT OF CONTRACT

- 29.1 The supplier must within sixty (60) days from commencement of the contract, establish a Distribution Facility within the Geographical Boundaries of the City of Cape Town (a graphic depiction of the aforesaid

Geographical Boundaries is attached to the Specifications marked Annexure '7'.) which meets the requirements set out in the Specifications in full, and otherwise meets the requirements necessary for the supplier to render the services contemplated in this contract and to meet its obligations.

- 29.2 The Cape Town Stadium shall perform only one (1) technical assessment of the Distribution Facility mentioned in clause 29.1 above, to confirm that it complies with the requirements set out in the Specifications and otherwise meets the requirements necessary for the supplier to render the services contemplated in this contract and to meet its obligations. Only once the technical compliance of the Distribution Facility has been confirmed in full by the Cape Town Stadium, after the aforementioned technical assessment, will work be allocated and/or products be procured from the supplier in terms of this contract. Should the supplier fail to establish a Distribution Facility which complies with the aforementioned requirements, within the sixty (60) days mentioned in clause 29.1 above or a reduced period as contemplated in clause 29.3 below, this shall be a material breach of the contract and the Cape Town Stadium shall be entitled to terminate the contract forthwith and without further notice to the supplier. The date on which the aforementioned technical assessment shall be held, will not exceed two weeks from expiry of the sixty (60) days period.
- 29.3 The supplier may inform the Cape Town Stadium that it is ready for the technical assessment referred to in clause 29.2 above, earlier than the sixty (60) day period mentioned in clause 29.1 above, in which case the supplier shall forfeit the remaining days of the aforementioned period and the Cape Town Stadium shall be entitled to conduct the technical assessment at an agreed date and time between the parties, which shall not exceed two weeks from receipt from the suppliers notification in terms of this clause.
- 29.4 The supplier shall cooperate fully and in good faith with the Cape Town Stadium in arranging for and assisting the Cape Town Stadium with the technical assessment referred to in clause 29.2 above, including but not limited to providing the Cape Town Stadium with access to all parts of the Distribution Facility during that assessment and demonstrating to the Cape Town Stadium all aspects of the facility relevant for the aforementioned technical assessment.
- 29.5 Notwithstanding the contents of 29.1 to 29.4 above, the Cape Town Stadium reserves the right, at its sole discretion and on fourteen (14) days' notice, to perform technical assessments of the Distribution Facility during the tenure of the contract as and when required, to ensure that the Distribution Facility meets the requirements set out in the Specifications in full, and otherwise meets the requirements necessary for the supplier to render the services contemplated in this contract and to meet its obligations. Should the outcome of the technical assessment be that the Distribution Facility is not compliant with the aforesaid requirement, this shall be a material breach of the contract.
- 29.6 The supplier shall submit to the Cape Town Stadium all documents as requested in the Specification as well as the responsive criteria mentioned in the tender document. All qualified staff employed by the supplier, Call-out vehicles (owned or leased) as well as tooling and equipment specified must be available for use by the supplier within sixty (60) days from commencement of the contract.

30. PROTECTION OF PERSONAL INFORMATION

- 30.1 The Service Supplier acknowledges that, for the purposes of this contract, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which Seller is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.
- 30.2 The Service Supplier agrees that they will at all times comply with POPIA and Purchaser's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this agreement in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their obligations in terms of the service level agreement.
- 30.3 The Service Supplier agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its contractors or other authorised individuals comes into contact in relation to the service level agreement.

- 30.4 The Service supplier agrees that it shall notify the Seller immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.
- 30.5 Unless so required by law, the Service Supplier agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the Seller.
- 30.6 The Service Supplier hereby indemnifies and holds the Seller harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Seller arising from or in relation to the Service Supplier's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection laws and/or other legislation.
- 30.7 The Service Supplier agrees that the Seller may conduct regular data protection audits on the Service Supplier and undertakes to give its full co-operation in this regard.