

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA		Provincial Supply Chain Management								
		INVITATION TO BID			Page 1 of 4					
BID NUMBER										
BID DESCRIPTION										
CUSTOMER DEPARTMENT										
CUSTOMER INSTITUTION										
BRIEFING SESSION	Y		N		SESSION COMPULSORY		Y		N	
					SESSION HIGHLY RECOMMENDED		Y		N	
BRIEFING VENUE					DATE			TIME		
COMPULSORY SITE INSPECTION	Y		N		DATE			TIME		
SITE INSPECTION ADDRESS										
TERM AGREEMENT CALLED FOR?	Y		N		TERM DURATION					
CLOSING DATE					CLOSING TIME					
TENDER BOX LOCATION										

NOTES

THE TENDER BOX IS OPEN

- Bids / tenders must be deposited in the Tender Box on or before the closing date and time.
- Bids / tenders submitted by fax will not be accepted.
- This bid is subject to the preferential procurement policy framework act, 2000 and the preferential procurement regulations, 2022, the general conditions of contract (gcc) 2010 and, if applicable, any other special conditions of contract.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL GPG BID FORMS – (NOT TO BE RE-TYPED) - ALL REQUIRED INFORMATION MUST BE COMPLETED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

THE TENDERING SYSTEM

The Invitation to Bid Pack consists of two Sections (Section 1 and Section 2). These two sections must be submitted separately, clearly marked with the Tender Number and the Section Number.

TRAINING SESSIONS

Non-compulsory **"How to tender"** workshops are held every Wednesday from 10:00 to 13:00. Kindly follow our social media platforms / etenders@gauteng.gov.za (Publications) for the venue of the training.



Provincial Supply Chain Management

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PART A INVITATION TO BID

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.	



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TENDER DOCUMENTS CAN BE OBTAINED FROM: <https://e-tenders.gauteng.gov.za/Pages/Advertised-Open-Tenders.aspx>
OR

ALTERNATIVELY SEND AN E-MAIL TO: Tender.admin@gauteng.gov.za

ANY ENQUIRIES REGARDING BIDDING PROCEDURE MAY BE DIRECTED TO:

DEPARTMENT	
CONTACT PERSON	
TELEPHONE NUMBER	
FACSIMILE	
E-MAIL ADDRESS	

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

DEPARTMENT	
CONTACT PERSON	
TELEPHONE NUMBER	
FACSIMILIE	
E-MAIL ADDRESS	



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PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER		DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Proof of authority must be submitted e.g. company resolution)			

RETURNABLE ATTACHMENT

**GAUTENG PROVINCE**TREASURY
REPUBLIC OF SOUTH AFRICA**PERSONAL INFORMATION PROCESSING FORM**

1. In the furtherance of the relevant Department's operational requirements and for purposes of complying with its policies, procedures and privacy laws, we may be required to disclose, process and/or further process your personal information provided to us and/or made available by virtue of submission of this bid.
2. For purposes contemplated in paragraph 1, the Gauteng Provincial Treasury (**Department**), hereby requests your consent and/or authorisation for the disclosure, processing and/or further processing of any and/or all your personal information as may be necessary for reasons provided in paragraph 1.
3. By signing this Personal Information Processing Consent form, you hereby grant the Department permission, consent and/or authorisation to disclose, process and further process your personal information within our records, as may be required and/or necessary from time to time.

I, the undersigned, _____ (*INSERT FULL NAME AND SURNAME*) with Identity Number _____, in my personal capacity or acting on behalf of _____ (Registration Number: _____) (**Company**), confirm that:

4. I have read and understood the contents of this Personal Information Processing Consent form, the details of which have been further explained to me.
5. my or _____'s (*INSERT COMPANY'S NAME*) personal information and/or data may be disclosed, processed and/or further processed by the Department (including its employees, agents, contractors and representatives) and such other third parties contracted with the Department involved in the processing, verification and management of my and/or Company's Personal Information in accordance with the requirements set out in paragraph 1 (**Processors**);
6. any one or more of the above entities/representatives may utilise my and/or Company's personal information/data storage and/or any traffic data processing infrastructure located in and outside the borders of the Republic of South Africa (**RSA**), in which instance my and/or Company's personal information/data may be conveyed, processed and/or stored outside the borders of RSA;
7. I accept the data security and protection measures adopted and/or applied by the Processors in their retention, disclosure, processing and further processing of my and/or Company's personal information/data; and
8. The Department may retain any of my personal information/data as may be required by the Department or for purposes contemplated in paragraph 1.

9. By my signature below, do hereby give my or the Company's irrevocable consent, and/or authorisation for purposes required and/or detailed in this Personal Information Processing Consent form.

Privacy Laws Compliance Clause

I, the signatory to this document/form, further warrant and undertake:

10. to comply with all privacy laws (including the Protection of Personal Information Act 4 of 2013, as amended, (**POPIA**)) applicable to the processing of any Personal Information resultant from and/or pursuant to the terms of this Agreement. You further undertake to ensure that all security measures are in place, to:
- ✓ ensure the lawful processing of Personal Information
 - ✓ secure the integrity and confidentiality of such Personal Information;
 - ✓ provide the appropriate and reasonable technical and organization measures to prevent any loss, damage or unauthorized destruction of Personal Information;
 - ✓ mitigate against any unlawful, data breach or unauthorised access to Personal Information;
 - ✓ identify any or potential risks related to data breaches or contravention with privacy laws;
 - ✓ apply the acceptable information security practices and procedures.
11. to indemnify the Department against any losses, howsoever arising, resultant from any breach or contravention of the privacy laws including your breach of this clause and shall, timeously, notify the Department, the data subject and the Information Regulator in the event of any contravention or unauthorised disclosure of Personal Information.
12. In accordance with the requirements of POPIA, I hereby give the Department the expressed and revocable consent to and/or authorisation to disclose, process and/or further process any Personal Information obtained by the Department pursuant to the terms of this Agreement.

Signed by: _____

ID Number: _____

Signature: _____

Designation: _____

Date: _____

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	INSTRUCTION TO BIDDERS	Page: 1 of 4

1.	The INVITATION TO BID Pack is drawn up so that certain essential information should be furnished in a specific manner. Any additional particulars shall be furnished in a separate annexure.
2.	The INVITATION TO BID forms should not be retyped or redrafted, but photocopies may be prepared and used. Additional offers may be made for any item, but only on a photocopy of the page in question or on other forms obtainable from the relevant Department or Institution advertising this BID. Additional offers made in any other manner may be disregarded.
3.	Should the INVITATION TO BID forms not be filled in by means of electronic devices, bidders are encouraged to complete forms in a black ink.
4	Bidders shall check the numbers of the pages and satisfy themselves that none are missing or duplicated. No liability shall be accepted with regards to claims arising from the fact that pages are missing or duplicated.
5	The INVITATION TO BID forms shall be completed, signed and submitted with the bid. SBD 5 (National Industrial Participation Programme Form) will only be added to the INVITATION TO BID pack when an imported component in excess of US \$ 10 million is expected.
6	A separate SBD 3.1, SBD 3.2 or SBD 3.3 form (PRICING SCHEDULE per item) shall be completed in respect of each item. Photocopies of this form may be prepared and used or additional copies, (if required) are obtainable from the relevant Department or Institution advertising this BID (not applicable for PANEL of BIDDERS).
7	Firm delivery periods and prices are preferred. Consequently, bidders shall clearly state whether delivery periods and prices will remain firm for the duration of any contract, which may result from this BID, by completing SBD 3.1 (PRICING SCHEDULE per item) (not applicable for PANEL of BIDDERS).
8	If non-firm prices are offered bidders must ensure that a separate SBD 3.2 (Non-Firm Prices per item) is completed in respect of each item for which a non-firm price is offered. Photocopies of this form may be prepared and used or additional copies, (if required) are obtainable from the relevant Department or Institution advertising this BID (not applicable for PANEL of BIDDERS).

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	INSTRUCTION TO BIDDERS	Page: 2 of 4

9	Where items are specified in detail, the specifications form an integral part of the BID document (see the attached specification) and bidders shall indicate in the space provided whether the items offered are to specification or not (not applicable for PANEL of BIDDERS).
10	In respect of the paragraphs where the items offered are strictly to specification, bidders shall insert the words "as specified" (see the attached specification) (not applicable for PANEL of BIDDERS).
11	In cases where the items are not to specification, the deviations from the specifications shall be indicated (see the attached specification).
12	In instances where the bidder is not the manufacturer of the items offered, the bidder must as per SBD 3.1 or SBD 3.2 (PRICING SCHEDULE per item) submit a Letter of Supply from the relevant manufacturer or his supplier (not applicable for PANEL of BIDDERS).
13	The offered prices shall be given in the units shown in the attached specification, as well as in SBD 3.1 or SBD 3.2 (PRICING SCHEDULE per item) (not applicable for PANEL of BIDDERS).
14	With the exception of imported goods, where required, all prices shall be quoted in South African currency. Where bids are submitted for imported goods, foreign currency information must be supplied by completing the relevant portions of SBD 3.1 (PRICING SCHEDULE per item) and SBD 3.2 (PRICING SCHEDULE per item) (not applicable for PANEL of BIDDERS).
15	Unless otherwise indicated, the costs of packaging materials (if applicable) are for the account of the bidder and must be included in the bid price on the (PRICING SCHEDULE per item) (not applicable for PANEL of BIDDERS).
16	Delivery basis (not applicable for PANEL of BIDDERS): a) Supplies which are held in stock or are in transit or on order from South African manufacturers at the date of offer shall be offered on a basis of delivery into consignee's store or on his site within the free delivery area of the bidder's centre, or carriage paid consignee's station, if the goods are required elsewhere. b) Notwithstanding the provisions of paragraph 16(a), offered prices for supplies in respect of which installation / erection / assembly is a requirement, shall include ALL costs on a "delivered on site" basis, as specified on the (PRICING SCHEDULE per item).

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17	Unless specifically provided for in the BID document, no bids transmitted by facsimile or email shall be considered.
18	Failure on the part of the bidder to sign any of the INVITATION TO BID forms and thus to acknowledge and accept the conditions in writing or to complete the attached INVITATION TO BID forms, Preference documents, questionnaires and specifications in all respects, may invalidate the bid.
19	Bids should preferably not be qualified by the bidder's own conditions of bid. Failure to comply with these requirements (i.e. full acceptance of the General Conditions of Contract or to renounce specifically the bidder's own conditions of bid, when called upon to do so, may invalidate the bid.
20	In case of samples being called for together with the bid, the successful bidder may be required to submit pre-production samples to the South African Bureau of Standards (SABS) or such testing authority as designated at the request of the relevant Department concerned. Unless the relevant Department decides otherwise, pre-production samples must be submitted within thirty (30) days of the date on which the successful bidder was requested to do so. Mass production may commence only after both the relevant Department and the successful bidder have been advised by the SABS that the pre-production samples have been approved.
21	Should the pre-production samples pass the inspections / tests at the first attempt, the costs associated with the inspections / tests will be for the account of the relevant Department. If the SABS or such testing authority as designated do not approve the pre-production samples, but requires corrections / improvements, the costs of the inspections / tests must be paid by the successful bidder and samples which are acceptable in all respects must then reach the SABS or such testing authority as designated within twenty-one (21) days of the date on which the findings of the SABS or such testing authority as designated were received by the successful bidder. Failure to deliver samples within the specified time and to the required standards may lead to the cancellation of the intended contract.
22	In case of samples being called for together with the bid, the samples must be submitted together with the bid before the closing time and date of the BID, unless specifically indicated otherwise. Failure to submit the requested sample(s) before the closing time and date of the BID may invalidate the bid.
23	In cases where large quantities of a product are called for, it may be necessary for the relevant item to be shared among two (2) or more suppliers.

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24	In cases where the relevant Department or Institution advertising this BID may deem it necessary, a formal contract may be entered into with the successful bidder, in addition to a Letter of Acceptance and / or purchase order being issued.
25	If any of the conditions on the BID forms are in conflict with any special conditions, stipulations or provisions incorporated in the bid invitation, such special conditions, stipulations or provisions shall apply.
26	This BID is subject to the General Conditions of Contract and re-issues thereof. Copies of these conditions are obtainable from any office of the Gauteng Provincial Government (GPG).
27	The Gauteng Provincial Government has become a member and as such a key sponsor of the Proudly South African Campaign. GPG therefore would like to procure local products of a high quality, produced through the practise of sound labour relations and in an environment where high environmental standards are maintained. In terms of the Proudly South African Campaign South African companies are encouraged to submit interesting and innovative achievements in the manufacturing field (if relevant to this BID) – including information on new products, export achievements, new partnerships and successes and milestones.
28	Compulsory GPG Contract: It is a mandatory requirement that successful bidder/s (to whom a tender is awarded) sign a GPG Contract upon award of any given contract.

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	POINT SYSTEM	Page 1 of 1

BID NUMBER		CLOSING DATE	
VALIDITY OF BID		CLOSING TIME	

The goods / services are required by the Customer Department / Institution, as indicated on SBD 01.

This BID will be evaluated on the basis of the under noted point system, as stipulated in the Preferential Procurement Policy Framework Act (Act number 5 of 2000).

POINT SYSTEM

The applicable preference point system for this tender is the 90/10 preference point system.	
The applicable preference point system for this tender is the 80/20 preference point system.	
Either the 90/10 or 80/20 preference point system will be applicable in this tender	

TYPE OF CONTRACT (COMPLETED BY PROJECT MANAGER)

SERVICE BASED	Y		N		SERVICE BASED	Y		N		VALUE BASED	Y		N	
VALUE BASED	Y		N											
QUANTITY BASED	Y		N											
TERM BASED	Y		N											

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	BIDDER'S DISCLOSURE	Page: 1 of 3

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest 1 in the enterprise, employed by the state?

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

- 2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State Institution

1 the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	BIDDER'S DISCLOSURE	Page: 2 of 3

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

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

2.2.1 If so, furnish particulars:

--

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

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

2.3.1 If so, furnish particulars:

--

3 DECLARATION

I, the undersigned (name).....in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 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 2 will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

2 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.

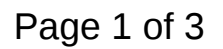
	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	BIDDER'S DISCLOSURE	Page: 3 of 3

- 3.5 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.
- 3.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.7 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

Signature		Date	
Position		Name of the Bidder	





PROVINCIAL SUPPLY CHAIN MANAGEMENT

EVALUATION METHODOLOGY PROCESS

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STAGE 2

CRITERIA FOR PRICE AND PREFERENCE POINTS (SPECIFIC GOALS)	POINTS
Bid Price	
Preference Points (Specific Goals)	
TOTAL	

SPECIFIC GOALS SHALL BE ALLOCATED AS FOLLOWS:

	POINTS ALLOCATED
SPECIFIC GOALS	

***It is the responsibility of the bidder to complete the relevant form (SBD 6.1) and submit it with this BID to the relevant office to qualify for the preference points.**



PROVINCIAL SUPPLY CHAIN MANAGEMENT

EVALUATION METHODOLOGY PROCESS

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BIDDERS JOB CREATION ANALYSIS

Company Name		Date Established	
--------------	--	------------------	--

	Permanent	Temp	SA Citizens	Other	Comments
Staff compliment at Establishment of Enterprise					
Current staff compliment					
Number of jobs to be created if Bid is successful					

The successful bidder may be audited during the course of the contract to verify the above information.

Comments to include:

- If Job Creation is direct (by your own company) or indirect (by your source of supply)
- Where the jobs created for employees that were in existing positions or unemployed? (Net Job Creation)

NOTE: Job Creation should adhere to all applicable RSA Legislation and Regulations.

THIS SECTION IS FOR OFFICE USE ONLY						
Observations	Initial Job Count	Job Creation Potential	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Year 1						
Year 2						
Year 3						
Year 4						
Year 5						

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	Local Government Finance and Governance Provision of Oversight Training for GPT, Municipal Officials, and Municipal Councillors for a 3-Year Period	Page: 1 of 13

COVER PAGE

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Content

This document references various standards and specifications applicable to the relevant business sector within the Republic of South Africa. Changes to these standards and specifications effected during the course of preparing this document have not been taken into account and therefore may vary. Changes or queries detected in this document must be brought to the attention of the GPT.

Compliance with this specification does not in itself confer immunity from legal obligations.

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	Local Government Finance and Governance Provision of Oversight Training for GPT, Municipal Officials, and Municipal Councillors for a 3-Year Period	Page: 2 of 13

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	Local Government Finance and Governance Provision of Oversight Training for GPT, Municipal Officials, and Municipal Councillors for a 3-Year Period	Page: 3 of 13

ABBREVIATIONS

1. **“Financial Year”** means twelve months commencing from 1 April and ending 31 March.
2. **“GPG”** - Gauteng Provincial Government, herein represented by the GPT.
3. **“OCR”** - Optical Character Recognition.
4. **“GPT”** - Gauteng Provincial Treasury
5. **“TMR”** – Transformation, Modernization, and Re-industrialization
6. **“PFMA”** - Public Finance Management Act
7. **“MFMA”** – Municipal Finance Management Act
8. **“RPA”** – Robotic Process Automation
9. **“AP”** – Accounts Payable
10. **“CSD”** – Central Supplier Database
11. **“EME”** - Exempted Micro Enterprises
12. **“TCS”** – Tax Compliance Status
13. **“XML”** – Extensible Markup Language
14. **“R&CA”** - Robotic and Cognitive Automation
15. **“TIFF”** - Tag Image File Format
16. **“PDF”** – shall mean portable document format.
17. **“EIS”** – Electronic Invoice Submission
18. **“BAS”** – Basic Accounting System
19. **“SAP”** – System Applications and Products
20. **“ERP”** – Enterprise Resource Planning

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	Local Government Finance and Governance Provision of Oversight Training for GPT, Municipal Officials, and Municipal Councillors for a 3-Year Period	Page: 4 of 13

1. PURPOSE

The Gauteng Provincial Treasury (GPT) invites suitably qualified and experienced service providers to submit proposals for delivering oversight and financial management training. This training is intended for GPT officials, municipal officials, and municipal councillors over a period of three (3) years.

2. PROJECT BACKGROUND AND GOALS

2.1 Mandate of the Provincial Treasury

Technical support to municipalities stems from the provincial treasury's role and responsibilities as contained in the Constitution of South Africa and the Municipal Finance Management Act, 2003 (Act 56 of 2003). The Municipal Finance Management Act aims to modernize and improve financial management practices in local government finances and governance to maximize the capacity of municipalities to deliver services to communities.

Sections 5 and 6 of the Municipal Finance Management Act outline the general functions of Provincial Treasuries and the authority of the National Treasury to delegate functions. In this regard, the National Minister of Finance (National Treasury) formally delegated additional responsibilities to the MEC for Finance (Provincial Treasuries) as per Municipal Finance Management Act Circular 20 dated 16 August 2005.

Provincial Treasuries, among others, must support municipalities in implementing the Municipal Finance Management Act and its related regulations, particularly in relation to financial management functions such as budgeting, revenue and expenditure management, as well as cash management, investments, and borrowings.

3. OBJECTIVES

3.1 The objectives of the training program are to:

- Build capacity in financial governance and oversight within local government institutions.
- Ensure consistent interpretation and application of relevant legislation, including the MFMA and associated regulations.
- Promote effective oversight by GPT and municipal councils to improve accountability and service delivery.

3.2 The intended outcomes of the training initiative

The primary outcome of this three-year training initiative is to strengthen financial oversight and governance within the local government ecosystem in Gauteng. The training seeks to enhance technical capacity across key stakeholder groups such as Provincial Treasury officials, municipal officials, and municipal councillors by focusing on their specific oversight roles and legislative responsibilities.

3.2.1 Gauteng Provincial Treasury Officials

The training will:

- Deepen the technical understanding of the application and interpretation of the MFMA, National Treasury Regulations, and relevant circulars.

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- Strengthen the Treasury's ability to provide targeted, effective technical support to municipalities.

3.2.2 Municipal Officials

The training will:

- Build comprehensive knowledge of the full spectrum of local government legislative frameworks (including MFMA, Municipal Systems Act, and related regulations).
- Enhance officials' capacity to implement sound financial management practices aligned with national standards.
- Promote improved fiscal discipline, planning, and reporting within municipalities.

3.2.3 Municipal Councillors

The training will:

- Clarify councillors' oversight roles in financial governance, including their responsibilities in budget oversight, performance monitoring, and accountability structures.
- Strengthen their ability to interrogate financial reports, audit outcomes, and compliance issues.
- Promote informed decision-making and strategic governance aligned with legislative requirements.

4. CUSTOMER AND STAKEHOLDERS

4.1 CUSTOMER

Gauteng Provincial Treasury - GPT

Business Unit – Municipal Finance Management

4.2 STAKEHOLDERS

List of all Municipalities to be provided with this Training Programme:

No.	Municipality	District
1.	Emfuleni Local Municipality	Sedibeng
2.	Lesedi Local Municipality	Sedibeng
3.	Merafong City Local Municipality	West Rand
4.	Midvaal Local Municipality	Sedibeng
5.	Mogale City Local Municipality	West Rand
6.	Rand West City Local Municipality	West Rand
7.	Sedibeng District Municipality	Sedibeng
8.	West Rand District Municipality	West Rand
9.	City of Ekurhuleni	Ekurhuleni Metropolitan
10.	City of Johannesburg	Johannesburg Metropolitan
11.	City of Tshwane	Tshwane Metropolitan

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5. SCOPE OF WORK

Bidder/s must propose a detailed training plan and methodology addressing the following key areas of requirements:

5.1 Functional Areas to Cover:

- Cash, Investments, and Borrowings Management
- Revenue Management, including Municipal Debtors
- Expenditure Management including Unauthorized, Irregular, Fruitless & Wasteful Expenditures
- Budgeting and Financial Reporting
- Assets and Grants Management
- Financial Misconduct (MFMA Chapter 15)
- Risk Management
- Supply Chain Management, including Contract Management.
- Oversight roles such as MPACs, Audit Committees, and Budget Steering Committees.

5.2 Training Methodology:

- Delivery mode: In-person or virtual (as required by GPT).
- Training duration: 3 days per group, 3 groups per year.
- Participants: Maximum 60 delegates per group (180 total per year).
- Evaluation: Pre-and post-training assessments, delegate feedback, and certificates of attendance.
- Reporting: Annual close-out reports with training analysis, key issues, and recommendations.

5.3 Project Phases:

- Development of a comprehensive project and training plan
- Customization of training material
- Delivery of training sessions
- Monitoring and evaluation
- Submission of close-out reports

6. DELIVERABLES AND REPORTING

- Bi-annual progress reports
- Attendance registers
- Evaluation reports from each training
- Annual close-out report

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7. PROJECT TIMELINES

The project will span a duration of three (3) years. Within two (2) weeks of the appointment, the Gauteng Provincial Treasury (GPT) will hold a planning session with the successful bidder.

8. REQUIRED EXPERIENCE AND QUALIFICATIONS OF THE PROJECT TEAM

Bidder/s must:

- 8.1 Have a minimum of five/5 years of experience in local government finance and governance training.
- 8.2 Submit detailed CVs and qualifications of the proposed project team. Team members must possess a minimum qualification of NQF Level 7 in Finance, Accounting, Economics, Public Administration, or Local Government. They should also demonstrate relevant experience in similar projects. Preference will be given to individuals with expertise as Public Finance Specialists, Economists, and/or Accountants.

Note: Bidder (s) are required to submit all CVs and copies of qualifications of the resources who will be assigned to this project (certified copies will be required at a later stage). All international qualifications must be accompanied by the South African Qualifications Authority (SAQA) certificate of evaluation. Points will not be awarded for International Qualifications without the SAQA certificate of evaluation.

9. REPORTING

The Gauteng Provincial Treasury will employ normal project management principles, and monitoring and evaluation will include, amongst others:

- Changes to the project implementation plan are only to be made with the consent of the Gauteng Provincial Treasury, and such changes should be provided within two weeks after the appointment of the bidder.
- Bi-annual progress reports or updates, formally or informally (or as agreed by the parties).
- A comprehensive close-out report annually to the Gauteng Provincial Treasury as per the project scope.

10. PRICE SCHEDULE

The bidder/s should provide a detailed cost breakdown for the training. The cost breakdown should be outlined according to the different phases in which they will implement the training. Please refer to the attached template pricing schedule in section 2. All costs must be VAT-inclusive.

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11. GENERAL CONDITIONS

11 a. RFP Pack

General conditions of contract describe the risks, liabilities, and obligations of the contracting parties and the administrative procedures for the administration of the contract. These conditions are stipulated in the RFP pack, and they cannot be amended.

SPECIAL CONDITIONS

11.1 Special Conditions of Contract

The bidder confirms that he/she has read, understood, and accepts the special conditions of the contract, which are attached as Annexure B in Section 1 of the tender document.

11.2 GPT Electronic Invoice Submission and Tracking System

Section 38(1)(f) of the PFMA and Treasury Regulation 8.2.3 regulate the Payment to suppliers within 30 days of invoice receipt. In support of this, it is compulsory for the successful bidder/s, on the award, to register for GPT Electronic Invoice Submission and Tracking. The GPT shall assist the successful bidder/s in this regard if required.

11.3 Fees

Fees for services rendered will be payable in the South African rand on successful completion of milestones as agreed in the Service Level Agreement.

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12. EVALUATION METHODOLOGY

STAGED APPROACH WHICH WILL BE APPLIED IN THE EVALUATION OF BIDS

Evaluation of the bids will be conducted in two stages as per the Preferential Procurement Regulations, 2022, issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act number 5 of 2000 (PPPFA), as follows:

Stage one will be the evaluation of bids on **Administration Compliance and Desktop Evaluations**.

During these stages, the bidder/s that do not meet the minimum required threshold as per each stage of evaluation will be disqualified and will not be considered for further evaluation.

Stage Two evaluation will be based on Price and Preference points only.

- Price = 80 points.
- Preference = 20 points.

STAGE 1A: ADMINISTRATIVE COMPLIANCE

- Bidder/s must complete, sign, and submit all pages of Tender Bid Documents Section 1 (Invitation to bid) and Section 2 (Price Schedule – Professional Services).
- Submission of completed and signed Protection of Personal Information Act Consent form
- Submission of completed and signed Integrity Pact for Businesses form.
- Bidder/s must submit a valid accreditation certificate/letter with the Local Government Sector Education Training Authority (LGSETA)
- Submission of fully completed and signed Standard Bidding Documents (SBD) 01 & 04.
- If there will be a share of services between Tenderer, i.e., Joint Venture/Consortium, all participating parties must submit the following supporting documents:
 - Service Agreement stating the roles and the share percentage of the value of the undertaken project, signed by all parties, i.e., Letter of Authority from both or all companies bidding for this tender.

NOTE: Bidder/s that do not comply with the above requirements shall be eliminated, and such bids shall be regarded as non-responsive

NON-MANDATORY REQUIRED DOCUMENTS:

1. Tax Compliance Status (TCS) Pin code issued by the South African Revenue Services (SARS).
2. Supporting Documents to claim preference points
3. Valid B-BBEE Certificate or valid Sworn Affidavit
4. Provide the latest independently reviewed financial statements with comparative years. Alternatively, if no audited annual financial statements are available, provide the latest management accounts with comparative years signed by the accountant. Companies that are not required to be audited must provide a letter from the accountant attesting thereto. Companies that are new or dormant are not required to submit audited financial statements.
5. Full Central Supplier Database (CSD) report.

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6. A valid copy of the Company and Intellectual Property Commission (CIPC) Certificate

STAGE 1B: DESKTOP EVALUATION

- A total of **95 points** is allocated for stage **1B**.
- The threshold for this part of the evaluation is **75 points**; any bidder who fails to meet this minimum requirement shall be deemed nonresponsive and be eliminated from any further evaluation.

AREA	COMMENTS	POINTS
1. COMPREHENSIVE PROJECT IMPLEMENTATION PLAN	Assesses the feasibility and robustness of the bidder/s proposed project plan for a period of 3 years (Allocation of 10 points): – Project schedule with milestones, timelines, and deliverables [2] – Resource plan (who does what, when, how) [3] – Monitoring, risk management, and quality assurance mechanisms [2] – Inclusion of annual and final close-out reports with insights and recommendations [3] – No Comprehensive Project Implementation Plan [0]	10
2. DETAILED TRAINING METHODOLOGY AND PLAN	Evaluation of how well the bidder/s plans to deliver training and ensure outcomes are met (Allocation of 30 points): – Clear training schedule for 3-day workshops, delivered 3 times per year [5] – Inclusion of all functional areas listed in the TOR - Section 5.1. [5] – Use of adult learning methodologies (e.g., interactive, case studies, simulations) [6] – Pre and post-training assessments to measure learning impact [4] – Delegate the evaluation process and feedback incorporation [4] – Issuance of certificates of attendance [3] – Provision of close-out training reports [3] – No Detailed Training Methodology and Plan [0]	30
3. QUALIFICATIONS AND COMPETENCY OF PROPOSED TEAM	Focuses on the academic qualifications and relevant experience of trainers (Allocation of 25 points): – At least 4 team members with a Bachelor's degree (NQF 7) or higher in either Finance, Accounting, Economics, Public Administration, or Local Government. [6] – A minimum of 5 years of experience is required from each team member provided [7] – Less than 5 years experience [0] – No CV attached [0]	25

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	– Lead trainer has a post-grad qualification (NQF: 8 or higher) in either Finance, Public Admin or Project Management [5] – A minimum of 5 years of experience is required from a lead trainer [7] – Less than 5 years experience [0] – No CV attached [0] NOTE: Copies of qualifications and CVs must be attached, failure to attach copies of qualifications and CVs will lead to non-award of points.	
4. EXPERIENCE IN SIMILAR PROJECTS – LOCAL GOVERNMENT TRAINING	Evaluation of the bidder/s track record and relevance of experience (<u>Allocation of 30 points</u>): – More than 9 years of experience in delivering training in Public Sector finance and governance [15] – More than 6 years to 9 years of experience in Public Sector finance and governance [10] – 5 to 6 years of experience in Public Sector finance and governance [5] – Less than 5 years in Public Sector finance and governance [0] – 5 or more relevant training projects delivered for South African municipalities (with supporting references) [15] – 2 to less than 5 relevant projects delivered for South African municipalities (with supporting references) [10] – 1 relevant project delivered for South African municipalities (with supporting references) red [5] – No references provided [0] NOTE: Bidder must provide references where similar projects were undertaken and finalized and provide evidence through a letter of recommendation from the institution/s. The reference letters should be on the client's letterhead, indicating the name of the bidder as being the bidder/s that serviced the client, the duration of the projects and should be signed by the client. In the event of sub-contracting, reference letters should be on the client's letterhead with contactable references of the main contractor must be provided.	30
TOTAL		95

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STAGE 2: PRICE AND PREFERENCE POINTS

The second stage of evaluation will be on the 80/20 preference point evaluation.

The contract will be awarded in terms of Regulation 4: Preferential Procurement Regulations, 2022. 80/20 preference point system in terms of which points are awarded to bidders as follows:

AREA	POINTS
Price	80
Preference	20

Preference points breakdown

THE SPECIFIC GOALS ALLOCATED POINTS IN TERMS OF THIS TENDER	NUMBER OF POINTS ALLOCATED
Women-Owned Enterprises	10
Youth-Owned Enterprises	10

Points for the above specific goals will be measured by calculating the pro rata percentage of ownership of the bidding company that meets this criterion. E.g., Company A has five shareholders, each of whom owns 20% of the company. Three of the five shareholders meet the criterion, i.e., they are women/ PwD/youth. Therefore, this bidder will obtain 60% of the points allocated for the goal, and the resultant number will be rounded off to two decimal places.

NOTE: Bidders must complete and sign SBD 6.1; failure to submit completed and signed SBD 6.1 will lead to non-award of points.

Specific Goal	Evidence required
Women-Owned Enterprises	Copy of Identity document / valid B-BBEE certificate/ valid sworn affidavit/ Full CSD report
Youth-Owned Enterprises	Copy of Identity document / valid B-BBEE certificate/ valid sworn affidavit/ Full CSD report

NOTE: Submitted information will be verified through various platforms.

Please refer to page 3 of the Standard Bidding Document (SBD 6.1) on section 2 of the tender documents for a formular that at will be used to calculate the price points out of 80 in respect of a tender with a Rand value of up to R50 000 000 (all applicable taxes included).

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13. CONTRACT AWARD CONDITIONS

GPT reserves the right to:

- Negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions including price, without offering the same opportunity to any bidder(s) who has not been awarded the status of the preferred bidder(s).
- Award to one or multiple service bidders.
- The department reserves the right to award the tender in part or in full.
- Should there be a need to replace a resource based on whom a consulting firm was appointed, it should be noted that the replacement will not be automatic i.e., provision of another resource by the bidder. GPT's prior written consent to replace the Resource must be obtained. The Bidder shall include in the request to GPT, the replacement resource's experience, expertise, and credentials, which must be equivalent (of that of the Resource), or better, failing which, the GPT may terminate this Agreement without any necessary notice period given and appoint the second-best bidder should they qualify or re-advertise the position to find a suitable replacement.
- Verify documents submitted, conduct reference checks and verification of qualifications to authenticate the submitted information.



Provincial Supply Chain Management

Financial Statements

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Submission of Financial Statements

The latest financial statements for the last two years are required (except if it is a new or a dormant entity)

- a) Financial statements must be signed by the auditor (in the case of companies) or the accounting officer (in the case of close corporations) the owner (in case of sole proprietors). Signatures must be on the accounting officer's / auditors report on the auditor's /accounting officer's letterhead.
- b) Financial statements must be signed by the member/s (in the case of close corporations) or by the director/s (in the case of companies.)
- c) In bids where consortia/joint ventures/sub-contractors and partnerships are involved, all bidders must submit their financial statements.
- d) If it is a new or dormant entity an opening set of financial statements must be submitted. A letter from the auditor (in the case of companies) or the accounting officer (in the case of close corporations) stating that the entity has not yet traded must be submitted.
- e) In cases where an entity has operated for a period less than a year the Management Accounts Report for the period in operation must be submitted signed accordingly as stated in paragraph (a) and (b) of this document.
- f) In cases where the entity has operated for a period more than a year but less that two years, then the financial statement for the first year of operation signed accordingly as per paragraph (a) and (b) of this document must be submitted.



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INTEGRITY PACT FOR BUSINESSES



FIGHTING CORRUPTION, PROMOTING INTEGRITY

1. INTRODUCTION

This agreement is part of the tender document, which shall be signed and submitted along with the tender document. The Chief Executive Officer of the bidding company or his/her authorised representative shall sign the integrity pact. If the winning bidder has not signed this integrity pact during the submission of the bid, the tender/proposal shall be disqualified.

2. OBJECTIVES

Now, therefore, the Gauteng Provincial Government and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as an integrity pact, to avoid all forms of corruption by following a system that is fair, transparent, and free from any influence/unprejudiced dealings before, during and after the currency of the contract to be entered, with a view to:

- 2.1 Enable the Gauteng Provincial Government to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
- 2.2 Enable bidders to abstain from bribing or any corrupt practice to secure the contract by assuring them that their competitors will refrain from bribing and other corrupt practices and the Gauteng Provincial Government will commit to preventing corruption, in any form by their officials by following transparent procedures.

3. GOVERNANCE

- 3.1 The integrity pact seeks to ensure that both parties comply with all applicable provincial, national, continental, and international laws and regulations regarding fair competition and anti-corruption.

4. ENVIRONMENT

- 4.1 The integrity pact requires that both parties comply with all applicable environmental, health, and safety regulations.

5. PROTECTION OF INFORMATION

- 5.1 The integrity pact seeks to ensure that both parties undertake to protect the confidentiality of information. Each party, when given access to confidential information as part of the business relationship should not share this information with anyone unless authorised.



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6. REPUTATION

- 6.1 The Gauteng Provincial Government wants to work with bidders who are proud of their reputation for fair dealing and quality delivery.
- 6.2 The Gauteng Provincial Government wants to ensure that working with government is reputation enhancing for the supplier.
- 6.3 The Gauteng Provincial Government expects bidders/suppliers to be protective of government's reputation, and ensure that neither they, nor any of their partners or subcontractors, bring government to disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in government.
- 6.4 The Gauteng Provincial Government further requires its bidders/suppliers to always adhere to ethical conduct even outside their contractual obligation with the Gauteng Provincial Government.

7. VALUES OF THE GAUTENG PROVINCIAL GOVERNMENT

- 7.1 The value system of the Gauteng City Region is shown below:

GAUTENG CITY REGION VALUES SYSTEM	
CORE VALUES	ETHICAL VALUES
Patriotism Purposefulness Team focused Integrity Accountability Passionate Activism	Integrity Accountability Dignity Transparency Respect Honesty

- 7.2 The Gauteng Provincial Government commits to ensure that the values system is embedded into the day-to-day operations of its institutions.

8. COMMITMENTS OF THE GAUTENG PROVINCIAL GOVERNMENT

The Gauteng Provincial Government commits itself to the following:

- 8.1 The GPG commits that its officials will at all times conduct themselves in accordance with Treasury Regulations 16A.8¹, copy of which is attached marked Annexure A, and that:
 - 8.1.1 The GPG is committed to doing business with integrity and proper regard for ethical business practices.
 - 8.1.2 The GPG hereby undertakes that no official of the GPG, connected directly or indirectly with the contract will demand, take a promise for or accept, directly or through

¹ Government Notice No. R. 225 of 2005 published under Government Gazette No. 27388 of 15 March 2005, as amended



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intermediaries, any bribe, consideration, gift, reward, favour, or any material or immaterial benefit or any other advantage from the bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

- 8.1.3 The GPG further confirms that its officials have not favoured any prospective bidder in any form that could afford an undue advantage to that bidder during the tendering stage and will further treat all bidders alike.
- 8.1.4 The GPG will during the tender process treat all Bidder(s) with equity.
- 8.1.5 All officials of the GPG shall report any attempted or completed violation of clauses to the following details:

	Gauteng Ethics Hotline	National Anti-Corruption Hotline
Toll-free number	080 1111 633	0800 701 701
SMS call-back	49017	N/A
E-mail	gpethics@behonest.co.za	nach@psc.gov.za
Fax	086 726 1681	0800 204 965
Website	www.thehotline.co.za	www.publicservicecorruptionhotline.org.za
Post	Chief Directorate: Integrity Management Private Bag X61 Marshalltown 2001	Public Service Commission Private X121 Pretoria 0001
Walk-in	Office of the Premier 55 Marshall Street Marshalltown Johannesburg 2001	Gauteng Provincial Office Public Service Commission Schreiner Chambers 6 th Floor 94 Pritchard Street Johannesburg



8.1.6 Following the report on the violation of the above clauses by the official(s), through any source, the GPG shall investigate allegations of such violations against the official or other role players and when justified:

- a) Take steps against such official and other role players (necessary disciplinary proceedings, and/or any other action as deemed fit, bar such officials from further dealings related to the contract process). In such a case, while an enquiry is being conducted by the Gauteng Provincial Government the proceedings under the contract would not be stalled.
- b) Inform the relevant Treasury of steps taken in 8.1.5(a) against such officials; and
- c) Report any conduct by such official and other role players that may constitute an offence to the South African Police Service.

9. COMMITMENTS OF THE BIDDERS

The bidder commits himself/herself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his/her bid or during any pre-contract or post contract stage to secure the contract or in furtherance to secure it and commits himself/herself to the following:

- 9.1 The bidder is committed to doing business with integrity and proper regard for ethical business practices.
- 9.2 The bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducements to any official of the Gauteng Provincial Government, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 9.3 The bidder further undertakes that he/she has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducements to an official of the Gauteng Provincial Government or otherwise in procuring the contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Gauteng Provincial Government for showing or forbearing to show favour or disfavor to any person in relation to the contract or any other contract with the Gauteng Provincial Government.
- 9.4 The bidder will not collude with other parties interested in the contract to preclude the competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 9.5 The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.



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- 9.6 The Bidder(s)/Contractor(s) will, when presenting his / her bid, disclose any and all payments he /she has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- 9.7 In case of sub-contracting, the Principal Contractor shall take the responsibility of adoption of Integrity Pact by the Sub-Contractor.
- 9.8 The bidder shall report any attempted or completed violation of clauses 9.1 to 9.7 including any alleged unethical conduct to the Gauteng Ethics Hotline (details are provided at clause 8.1.4).
- 9.9 The bidder (or anyone acting on its behalf) warrants that:
 - 9.9.1 It has not been convicted by a court of law for fraud and/or corruption with respect to the procurement/tendering processes; and/or
 - 9.9.2 It has not been convicted by a court of law for theft or extortion; and/or
 - 9.9.3 It is not listed on the National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

10. SANCTIONS FOR VIOLATION

- 10.1 The breach of any aforesaid provisions or providing false information by employers, including manipulation of information by evaluators, shall face administrative charges and penal actions as per the existing relevant rules and laws.
- 10.2 The breach of the Pact or providing false information by the Bidder, or anyone employed by him, or acting on his behalf (whether without the knowledge of the Bidder), or acting on his/her behalf, shall be dealt with as per the provisions of the Prevention and Combating of Corrupt Activities Act (12 of 2004).
- 10.3 The Gauteng Provincial Government shall also take all or any one of the following actions, wherever required:
 - 10.3.1 To immediately call off the pre-contract negotiations without giving any compensation to the bidder. However, the proceedings with the other bidder(s) would continue.
 - 10.3.2 To immediately cancel the contract, if already awarded/signed, without giving any compensation to the bidder.
 - 10.3.3 To recover all sums already paid by the Gauteng Provincial Government.
 - 10.3.4 To cancel all or any other contracts with the bidders and GPG shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value.
 - 10.3.5 To submit the details of the bidder to the National Treasury to register on the database for tender defaulters.



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11 CONFLICT OF INTEREST

- 11.1 A conflict of interest involves a conflict between the public duty and private interest (for favor or vengeance) of a public official, in which the public official has private interest which could improperly influence the performance of their official duties and responsibilities. Conflicts of interest would arise in a situation when any concerned members of both parties are related either directly or indirectly or has any association or had any confrontation. Thus, conflict of interest of any tender committee must be declared in a prescribed form.
- 11.2 The bidder shall not lend or borrow any money from or enter any monetary dealings or transactions, directly or indirectly, with any member of the tender committee or officials of the Gauteng Provincial Government, and if he/she does so, the Gauteng Provincial Government shall be entitled forthwith to rescind the contract and all other contracts with the bidder.

12 LEGAL ACTIONS

- 12.1 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

13 VALIDITY

- 13.1 The validity of this Integrity Pact shall cover the tender process and extend until the completion of the contract to the satisfaction of both the Gauteng Provincial Government and the bidder (service provider).
- 13.2 Should one or several provisions of the Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

GPG INTEGRITY PACT FOR BUSINESSES

BIDDER/SUPPLIER/SERVICE PROVIDER	
Signature of the CEO	
Full name of the CEO	
Tender number	
Date	

Annexure A

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.

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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 any thing 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.
- 2. 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
- 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**
- 7.1 Within thirty (30) days of receipt of the notification of contract award,

security

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 anti-dumping 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 Programme (NIP)** 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.

Js General Conditions of Contract (revised July 2010)

Annexure B



CONTRACT FOR SERVICES: (AS PER TERMS OF REFERENCE)

TENDER NUMBER: _____

BETWEEN

THE GAUTENG PROVINCIAL TREASURY

AND

REGISTRATION NUMBER: _____

WHEREBY IT IS AGREED AS FOLLOWS:

Initials: _____ Department _____ Service Provider _____

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Initials:

 Department

 Service Provider

1. DEFINITIONS

In this Agreement, unless the contrary is clearly indicated -

- 1.1 "Agreement" means this document and includes any document that may be attached and incorporated into this document as agreed between the Parties;
- 1.2 "Commencement Date" means _____, notwithstanding Date of Signature;
- 1.3 "Confidential Information" means all information or data of any nature whatsoever which the Receiving Party may obtain from the Disclosing Party including, without limitation, Intellectual Property and regardless of how such information is disclosed to the Receiving Party including, without limitation, orally, visually or by inspecting documentation, electronic data or other matter. The following is not Confidential Information:
- i. information that is known to the Receiving Party prior to the date on which it is disclosed;
 - ii. information that is in the public domain prior to the date on which it is disclosed;
 - iii. information that enters the public domain subsequent to the date on which it is disclosed through no act or omission by the Receiving Party; and
 - iv. information that one Party authorises the other Party in writing to disclose;
- 1.4 "Date of Signature" means the last dated signature of this Agreement;
- 1.5 "Data" means any data, including personal data as defined in the Electronic Communications and Transactions Act of 2002 and/or in the Protection of Personal Information Act of 2013 and any other legislation related to the protection of Data, supplied to the Receiving Party by the Disclosing Party or stored, collected, collated, accessed or processed on behalf of the Disclosing Party by the Receiving Party, if applicable;
- 1.6 "Deliverables" means those Deliverables as set out in the Agreement documents, annexures and terms of reference;
- 1.7 "Department" means the Gauteng Provincial Treasury being a department of the Gauteng Provincial Government listed as such under Schedule 2 to the Public Service Act, Proclamation 103 of 1994;

Initials: _____ _____
 Department Service Provider

- 1.8 “Disclosing Party” means a Party or any person acting on behalf of that Party that discloses or provides Confidential Information to the Receiving Party under this Agreement;
- 1.9 “Good Industry Practice” means using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled, and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.10 “Intellectual Property” means, collectively, patents, trademarks, designs, models, copyright, Know-How, inventions, trade and business secrets, and any other type of intellectual property that is used or held in connection with a Party’s business, regardless of whether such intellectual property is currently used or held or is registered or unregistered. Intellectual Property further includes any other right to apply for the registration, use or protection of same;
- 1.11 “Know-How” means all the ideas, designs, documents, diagrams, information, devices, technical and scientific data, secret and other processes and methods used in connection with a Party’s business, information regarding marketing and promotion of its business, as well as all and any modifications or improvements to any of them which do not constitute entirely new services or products. Know-How that is in the public domain on the Effective Date or which enters the public domain subsequent to the Effective Date through no act or omission by a Party, is excluded from this definition;
- 1.12 “Losses” mean all losses, damage, damages, liabilities, costs, expenses, fines, penalties and claims, and all related costs and expenses. Losses include legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, and interest;
- 1.13 “Parties” mean the parties to this Agreement, and a reference to “Party” is a reference to one of them as determined by the context;
- 1.14 “Products” mean any tangible deliverables that the Service Provider provides to the Department under this Agreement which serves as an integral part of the Services;
- 1.15 “Proposal” means the Service Provider’s response to the Department’s terms of reference in respect of the carrying out of the Services. The GPT has considered and accepted these documents and they are incorporated into and must be read with this Agreement;

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- 1.16 "Payment Schedule" means the document that stipulates the breakdown of payment to be made in respect of Services, which must be read with this Agreement;
- 1.17 "POPIA" means Protection of Personal Information Act 4 of 2013 and its Regulations;
- 1.18 "Purchase Order" means a purchase order raised by the Department requesting the Service Provider to render Services;
- 1.19 "Receiving Party" means the Party, or any person acting on behalf of that Party, that receives disclosure of any Confidential Information from the Disclosing Party under this Agreement;
- 1.20 "RFP" means the GPT's Request for Proposal Tender number: _____ inclusive of the Terms of Reference, which shall be read together with this Agreement;
- 1.21 "Service"/ "Scope of Service" means the service that the Service Provider must render to the Department as specified in the Terms of Reference;
- 1.22 "Service Provider" means _____ duly incorporated and registered in terms of the law of the Republic of South Africa with registration number _____;
- 1.23 "Staff" means an employee of either Party;
- 1.24 "Term" means a period as fully described in the Terms of Reference;
- 1.25 "Terms of Reference" means the document that formed part of the Request for Proposal that was advertised in respect of the said Service and must be read together with this Agreement. For the avoidance of doubt, all conditions set out therein shall be binding on the Service Provider;
- 1.26 "Trade Marks" means any trademarks (registered and/or unregistered), designs, logos, style names, slogans which a Party owns or has the right to use or any derivative service offerings of, and applications for, any of same; and
- 1.27 "VAT" means value added tax chargeable under the Value Added Tax Act 89 of 1991, as amended.

2. ABBREVIATIONS

GPG – Gauteng Provincial Government

GPT – Gauteng Provincial Treasury

Initials: _____ _____
 Department Service Provider

3. INTERPRETATION

- 3.1 The table of contents in this Agreement is for convenience and reference only and may not be used in the interpretation of this Agreement.
- 3.2 In this Agreement, unless the contrary is clearly indicated -
- 3.2.1 reference to any gender includes the other genders;
- 3.2.2 reference to the singular includes the plural and *vice versa*;
- 3.2.3 reference to natural persons includes legal persons (incorporated or unincorporated) and *vice versa*;
- 3.2.4 any reference to an enactment is to that enactment as at the date of signature of this Agreement and as amended or re-enacted from time to time;
- 3.2.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party then the same effect must be given to it as any other substantive provision in this Agreement notwithstanding that it is in the definition clause or used as a definition in any other clause of this Agreement;
- 3.2.6 any number of days that are prescribed must be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or South African public holiday, in which case the last day is the next day which is not a Saturday, Sunday or South African public holiday;
- 3.2.7 if there is any conflict between figures referred to in numbers and in words then the reference in words must prevail;
- 3.2.8 if any term is defined within the context of any particular clause then the term so defined bears that defined meaning for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause, unless it is clear from the clause in question that the defined term applies to that clause only;
- 3.2.9 reference to a day, month or year is construed as a Gregorian calendar day, month or year;

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 Department Service Provider

3.2.10 expiry or termination of this Agreement does not affect any provision of this Agreement that expressly provides for its operation after expiry or termination of this Agreement or which of necessity must continue to have effect after expiry or termination of this Agreement, notwithstanding that the provision itself does not expressly provide for this, including any Purchase Order placed during the Term;

3.2.11 the rule that a contract is interpreted against the party responsible for the drafting or preparation of the contract does not apply; and

3.2.12 if the Service Provider is liquidated or sequestrated then a reference in this Agreement to the Service Provider is also applicable to and binding upon the Service Provider's liquidator or trustee, as the case may be.

4. PREAMBLE

4.1 The Gauteng Provincial Treasury (GPT) has identified the need to procure the services as per Terms of Reference.

5. APPOINTMENT AND ACCEPTANCE

5.1 The Department hereby appoints the Service Provider with effect from the Commencement Date to render the Services and the Service Provider accepts the appointment upon the provisions of this Agreement.

6. COMMENCEMENT AND DURATION

6.1 This Agreement commences on the Commencement Date and endures for the Term.

7. THE SERVICE

7.1 The scope of Services to be provided by the Service Provider in terms of the Agreement is set out in the terms of reference read together with this Agreement and Annexures. The requirements set out in the terms of reference and this Agreement are not exhaustive and may therefore include additional steps to challenges faced to complete the initiative.

7.2 The onus will rest on the Service Provider to keep sufficient records, documentation and information of such variations and changes.

Initials: _____ _____
 Department Service Provider

- 7.3 Performance will be reviewed by the GPT during the Term of this Agreement.
- 7.4 Should performance be below the required standard, the contract will be terminated before the end of the agreed period by the GPT.

8. SERVICE PROVIDER UNDERTAKINGS AND WARRANTIES

The Service Provider undertakes and warrants that:

- 8.1 it has valid title to render the Service;
- 8.2 it will render the Service with due care, skill and expertise;
- 8.3 it will render the Service with promptness and diligence;
- 8.4 it will at all times use adequate numbers of qualified Staff who are appropriately and suitably educated, trained, skilled and experienced to render the Service;
- 8.5 time is of the essence in rendering the Service and shall be adhered to;
- 8.6 the Services will comply, as at the date of rendering, with all applicable legislative and regulatory requirements as well as rulings of any competent authority that has jurisdiction over the Services, including, without limitation, those pertaining to labour, environmental, health and safety and data protection;
- 8.7 whilst rendering the Services it will at all times comply with all industry-related best practices, codes and standards issued or published by any governing body, council or organisation;
- 8.8 whilst rendering the Services it will at all times comply and ensure that its Staff at all times comply with the reasonable general supervision and direction of the Department;
- 8.9 it will devote the necessary time and attention to providing the deliverables, as set out in the terms of reference and not engage in any business or activity that will prevent the Service Provider from providing the Services;

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 Department Service Provider

- 8.10 all actions and commitments agreed upon or pursuant to the project management committee meetings or agreed to, will be strictly adhered to;
- 8.11 it will observe neutrality and objectivity in its views and opinions;
- 8.12 it will provide the Department with any information and reports reasonably requested by the Department in connection with the Services, and which information the Service Provider warrants to be accurate and complete;
- 8.13 it has not and will not participate in any bribery or corrupt act, as defined in the applicable laws; and
- 8.14 it will not (and will procure that its Staff do not) under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of the Department's Staff; and
- 8.15 it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this Agreement.

9. GAUTENG TREASURY'S UNDERTAKINGS AND WARRANTIES

- 9.1 The Services shall be provided subject to the following undertakings from the Department:
- 9.1.1 The Department shall, subject to Clause 10 hereinbelow, pay the Service Provider for Services rendered. For the avoidance of doubt, the Parties shall, upon award but no later than the Date of Signature of this Agreement, agree to a Payment Schedule which shall include at which stage payments are made. Further, the amounts payable shall be the amounts that are not in dispute by the Parties.
- 9.1.2 The Department shall ensure that the Service Provider has access to the locations and the relevant equipment as reasonably required to affect the Services; and
- 9.1.3 The Department shall ensure that the Service Provider receives the necessary support and cooperation from the Department's employees and/or third party Service Providers as reasonably required to affect the Services.

Initials: _____ _____
 Department Service Provider

10. CHARGES

- 10.1 The total contract amount payable by the GPT to the Service Provider under this Agreement, as per award letter, (VAT included), payment of such as Payment Schedule which shall form part of this Agreement.
- 10.2 The Service Provider must render an invoice to the GPT for Services rendered as per the Payment Schedule.
- 10.3 The Service Provider is committed to ensure stable optimum performance of the services required.
- 10.4 Invoices accurately completed and submitted by the Service Provider and thereafter verified by the Department will be paid within 30 days of receipt of correct invoice.
- 10.5 Except as otherwise expressly provided for in the Agreement, no claim by the Service Provider for any additional payment on any grounds shall be allowed (including without limitation, misunderstanding or misinterpretation in respect of the Agreement) nor shall the Service Provider be released from any risk or obligations imposed on or undertaken by it on such grounds or on the ground that it could not have foreseen any matter which might affect, or have affected its performance in terms of the Agreement.

11. INVOICE AND PAYMENT

- 11.1 The Service Provider shall register for GPG Electronic Invoice Submission and Tracking for invoicing purposes.
- 11.2 The Service Provider shall submit invoices for Services rendered, electronically according to the Payment Schedule.
- 11.3 Unless otherwise specified, all charges for Services and/or Deliverable are inclusive of VAT.
- 11.4 The Department may withhold payment of an amount that is disputed in good faith.
- 11.5 The Department must pay a correct invoice that is due and payable in terms of this Agreement within 30 days of receipt thereof.
- 11.6 The Service Provider will provide invoices accordingly and payment shall be paid to the Service Provider's bank account details provided below:

Initials: _____ _____
 Department Service Provider

Name of Bank:
Branch Name:
Branch Code
Account Number:

- 11.7 The Service Provider must maintain reasonably complete and accurate records of, and supporting documentation for the amounts billed to and payments made by the Department under this Agreement in accordance with generally accepted accounting practices applied on a consistent basis, and shall make these available to the Department or its auditors for review upon written request.

12. PROJECT TEAM

- 12.1 The Parties shall from Commencement Date form a project team, which will be responsible for the management of the Agreement so as to ensure the smooth and satisfactory delivery of the Services by the Service Provider to the GPT.

- 12.2 The Project team will be agreed to by Parties.

- 12.3 The functions of the project team shall be as follows:

- 12.3.1 to facilitate communication between the Parties;
- 12.3.2 to review the progress on the implementation of the Agreement;
- 12.3.3 to manage and resolve potential disputes;
- 12.3.4 to monitor and maintain alignment with departmental policy and strategy;
- 12.3.5 to achieve Agreement objectives within agreed scope, time, cost and quality;
- 12.3.6 to provide advice and consent on scope Variation;
- 12.3.7 to facilitate all necessary departmental approvals; and
- 12.3.8 to provide feedback to relevant stakeholders.

13. PERFORMANCE MANAGEMENT

- 13.1 The rendering of the Services is subject to on-going monitoring and review as per clause 7.4.
- 13.2 The Service Provider undertakes to attend and participate in meetings that the Department shall reasonably require from time to time.

Initials:
 Department Service Provider

14. DATA PROTECTION

14.1 The Parties specifically record that all Data provided by the GPG to the Service Provider and/or its employees or any other person appointed by the Service Provider for this Services in this Agreement, or to which the Servicer Provider or its employees, may be exposed shall constitute Confidential Information and where applicable, intellectual property belonging to the GPG.

14.2 The Service Provider hereby warrants:

14.2.1 in favour of the GPG that it and/or its employees appointed for the Services of this Agreement, shall at all times strictly comply with all applicable legislation and with all the provisions and requirements of any of the GPG's Data protection policies and procedures which may be in force from time to time;

14.2.2 and undertakes that it shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with, or in any other manner use the GPG's Data for any purpose other than with the express prior written consent of the GPT;

14.2.3 that it shall immediately inform the GPT should any Data of the GPG to which it has access to be compromised in any manner or form. The Service Provider further undertakes to also immediately inform the GPT as to how it will manage such compromise and what steps will be taken to rectify the situation to the satisfaction of the GPT;

14.2.4 that it shall ensure that all its systems and operation which it uses to provide the Services, including all systems on which data is copied, compiled, collated, processed, transmitted, stored, collected, altered or deleted, or otherwise used as part of providing the Services, shall at all times be of high standards required by law and be of a standard no less than the standards which are utilized by Service Provided for protection, control and use of its Data.

14.3 The GPT may at any time:

14.3.1 access the information the Service Provider has about the GPG and may request the Service Provider to correct or delete the information if it is inaccurate, irrelevant, excessive, out-of-date, incomplete, misleading, obtained unlawfully, or no longer authorized to be kept and may file a complaint with the Information Regulator about an alleged contravention of the protection of the GPG's information;

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 Department Service Provider

14.3.2 withdraw consent to allowing the Service Provider to process the GPG's Data, except as otherwise allowed, or required by law.

14.4 The Service Provider herein expressly consents to the GPG processing of any/all personal information (as defined in POPIA) relating to the Service Provider in the course of managing this Service and/or all ancillary matters connected hereto.

14.5 The Service Provider's obligations under this clause will survive the termination of this Agreement for any reason.

15. CONFIDENTIALITY

The Parties agree that this confidentiality clause survives the termination or expiry of this Agreement and the Receiving Party undertakes:

15.1 to treat as strictly confidential all Confidential Information;

15.2 not to use Confidential Information for any purpose other than the performance of its obligations in under this Agreement;

15.3 not to disclose Confidential Information to any person whomsoever other than its Staff and then only on a need-to-know basis;

15.4 to ensure that its Staff are made aware of the confidential nature of the Confidential Information prior to revealing any Confidential Information to any of its Staff;

15.5 to ensure that its Staff observe and comply with their obligations in respect of Confidential Information, whether or not they are still part of its Staff;

15.6 to use the same standard of care (which may not be less than a reasonable standard of care) in protecting the Confidential Information, as it uses to protect its own confidential information; and

15.7 to return to the Disclosing Party at any time upon request or upon termination or expiry of this Agreement, unless the Disclosing Party otherwise agrees in writing, all copies and partial copies of all Confidential Information (whether in paper or electronic format) which the Receiving Party may have obtained from the Disclosing Party as well as all notes (whether in paper or electronic format) which the Receiving Party may have prepared or may obtain as a result of the Confidential Information being made available to the Receiving Party.

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 Department Service Provider

16. AUDIT RIGHTS

- 16.1 This Agreement is subject to the provisions of the regulating framework.
- 16.2 The Department, acting through its duly authorised representatives (including without limitation, its external auditors) is entitled to inspect during business hours and at the premises of the Service Provider or such other premises where the Services are rendered from, all books, records, and supporting documentation related to the rendering of the Services and to the Service charges and to make copies of such books, records, and supporting documentation for audit purposes.
- 16.3 If the Department exercises its rights under this clause then it must do so at its own cost and on reasonable prior notice to the Service Provider.
- 16.4 The Department must disclose to the Service Provider any adverse findings pertaining to the Service Provider that emanates from the exercise of the Department's rights under this clause.

17. INTELLECTUAL PROPERTY

- 17.1 Any Intellectual Property rights that the Service Provider prepares, creates or authors for the Department under this Agreement in any media or format and whether that is done by the Service Provider alone or by the Service Provider in conjunction with any third party of the Service Provider or the Department, belongs exclusively and in totality to the Department and the Service Provider hereby cedes all right, title and interest in and to any such Intellectual Property rights to the Department. The Service Provider must ensure that any third party that the Service Provider may appoint in relation to the execution of its obligations under this Agreement agrees to the provisions of this clause.
- 17.2 Any Intellectual Property that belongs to a Party is the sole property of that Party and neither Party acquires any right, title or interest in the other Party's Intellectual Property.
- 17.3 Nothing contained in this Agreement restricts either Party to use any idea, concept, Know-How, or technique developed or learned by any Party during the course of the relationship between the Parties, which does not:
- 17.3.1 amount to a disclosure of Confidential Information in breach of this Agreement; or
 - 17.3.2 infringe the Intellectual Property rights of the other Party;

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 Department Service Provider

- 17.4 A Party may only use the other Party's Intellectual Property if the latter specifically authorises such use in writing and then only to the extent so authorised.

18. GENERAL INDEMNITY

The Service Provider hereby indemnifies and holds the Department and its officers, directors, Staff, successors, and assigns (in whose favour this constitutes a *stipulatio alteri*), harmless from Losses arising directly out of:

- 18.1 any claim or action arising from the Service Provider's breach of or failure to observe or perform any of its duties or obligations under this Agreement;
- 18.2 any claim or action arising from the Service Provider's breach of any warranty under this Agreement;
- 18.3 any claim or action arising from the Service Provider's breach of any obligation pertaining to Confidential Information;
- 18.4 the death or bodily injury of any of the Department's Staff, Service Providers, clients, visitors, or other affected persons caused by the Service Provider;
- 18.5 the damage, loss or destruction of any real, tangible or intangible personal property of any of the Department's Staff, Service Providers, clients, visitors, learners or other affected persons caused by the Service Provider;
- 18.6 any claim or action arising from the Service Provider's breach of any obligation pertaining to Data Protection in terms of this Agreement and/or any law; and/or
- 18.7 any claim, demand, charge, action, cause of action, or other proceeding instituted by any of the Department's Staff, Service Providers, clients, visitors, or other affects persons against the Service Provider but resulting from an act or omission of the Service Provider in its capacity as an employer of a person.

19. LIMITATION OF LIABILITY

- 19.1 Limitation of the Service Provider's liability does not apply to –

- 19.1.1 Losses arising directly or indirectly out of or in connection with criminal conduct, negligence and/or misconduct on the part of the Service Provider;

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 Department Service Provider

- 19.1.2 any claim, demand, charge, action, cause of action, or other proceeding brought by a third person against the GPG based on the infringement of any Intellectual Property.

20. EVENTS OF DEFAULT

Notwithstanding anything seemingly to the contrary in this Agreement, the Department is entitled but not obliged, to terminate this Agreement at any time by giving the Service Provider notice to that effect, if the Service Provider -

- 20.1 commits an act which is or would (if committed by a natural person) be an act of insolvency;
- 20.2 allows any judgment against it to remain unsatisfied for a period of 30 (thirty) days, unless it takes steps to rescind or appeal against such judgment within such 30 (thirty) day period (or, if it did not become aware of such judgment within such 30 (thirty) day period, then within 30 (thirty) days after the date on which it became aware of such judgment) and successfully prosecutes such rescission or appeal to a timeous conclusion but in any event within 45 (forty-five) days after the date on which it became aware of the judgment;
- 20.3 compromises or attempts to compromise or defer payment of any debt owing by it to its creditors generally or to any class of its creditors generally;
- 20.4 being a juristic person, is provisionally or finally liquidated, undergoes business rescue proceedings, has/d a change of ownership and/or BBBEE rating/status, are removed from the register of companies, placed under judicial management (whether provisionally or finally), takes any steps for its voluntary winding up, or undergoes a change of control;
- 20.5 disposes of all or a material portion of its assets or business or ceases (including, without limitation where there is a reasonable prospect of cessation) to conduct its business except to the extent that such disposal or cessation relates to a solvent and genuine restructuring of the Service Provider, without the prior written consent of Department;
- 20.6 encumbers or hypothecates in any manner whatsoever a material portion of its assets except to the extent that such encumbrance or hypothecation relates to a solvent and genuine restructuring of the Service Provider, without the prior written consent of Department;

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 Department Service Provider

- 20.7 has given any representation or warranty in terms of this Agreement and it proves to be incorrect in any material manner or respect whatsoever;
- 20.8 engages or is found to have engaged in any dishonest, corrupt or fraudulent practice in competing for or in the execution of its obligations under this Agreement;
- 20.9 contravenes provisions relating to the Service and/or quality thereof;
- 20.10 fails to render Services as agreed; and/or
- 20.11 contravenes the provisions of this Agreement pertaining to cession and assignment.

21. BREACH

If a Party breaches this Agreement and fails to remedy such breach within 10 (ten) days of being given written notice requiring it to do so by the aggrieved Party, then the aggrieved Party is entitled, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim Losses.

22. PENALTY

In the event that the Service Provider due to its negligence or for reasons within its control, does not perform satisfactorily the services due to the Department in terms of this contract, the Department shall without prejudice to other remedies it has under this contract, be entitled to levy a penalty of 2% of the total amount payable to the Service Provider for every working day or part thereof which shall pass between the end of the period specified for the performance and the actual date of completion. The penalty shall be deducted from the amount payable to the Service Provider.

23. DISPUTE RESOLUTION AND ARBITRATION

- 23.1 Should any difference or dispute, except breach of an obligation in terms of this contract arise at any time between the parties, duly authorized representatives of each Party shall meet within 14 (fourteen) working days, or such period as the parties may agree, from the date on which the dispute arose to resolve the dispute amicably.
- 23.2 The Parties will, pending resolution of the dispute, continue to fulfil all other obligations under this Agreement that are not in dispute.

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 Department Service Provider

- 23.3 If the dispute is incapable of amicable resolution then either Party shall be entitled to refer the dispute to the Arbitration Foundation of Southern Africa (AFSA) to be determined by arbitration in terms of Arbitration Act 42 of 1965, such arbitration shall be held in Johannesburg in the English language.
- 23.4 The appointment of the arbitrator shall be agreed upon between the Parties but failing agreement within 10 (ten) days either Party shall be entitled to request AFSA to make the appointment and, in making such appointment, to have regard to the nature of the dispute.
- 23.5 The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act 42 of 1965 but shall not be obliged to follow the procedures prescribed in that Act. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of a court of competent jurisdiction.

24. NON-SOLICITATION

The Service Provider shall not without the prior written consent of the Department, either during or within 24 (twenty-four) months after termination or expiry of this Agreement, directly or indirectly solicit for employment, any person who within the duration of this Agreement, was a member of the Department's Staff and who was directly involved with any activity relating to this Agreement.

25. CESSION AND ASSIGNMENT

- 25.1 The Service Provider shall not be entitled to cede or assign any of its rights and obligations in terms of this Agreement to any third party.
- 25.2 Notwithstanding the above, the Service Provider may cede its obligation to receive payment in terms of this Agreement to a third party. Notwithstanding the aforesaid, the Service Provider shall remain liable for the rendering of the Service in terms of this Agreement.
- 25.3 The Department shall implement payment of in terms of a cession within 60 days from the date of receipt of all necessary documentation.

26. PUBLICITY

The Service Provider agrees that neither it nor any of its Staff shall make or issue, directly or indirectly, any formal or informal, public or private announcement, advertisement or statement for any commercial purpose in connection with the name of the Department or this Agreement or the negotiations leading up to it, without the express prior written consent of the Department, which consent must be obtained both in relation to the fact of the announcement, advertisement or statement, as well as to its contents, which consent shall not be unreasonably withheld or delayed.

27. FORCE MAJEURE

27.1 If *vis major* or *force majeure* or *casus fortuitus* ("Interrupting Circumstances") cause delays in or failure or partial failure of performance by a Party of all or any of its obligations under this Agreement, then this Agreement or the affected portion thereof is suspended for the period during which the Interrupting Circumstances prevail. If the Interrupting Circumstances prevail for a period of more than 10 (ten) days then the affected Party is entitled to cancel this Agreement on 5 (five) days' written notice to the other Party.

27.2 The Party relying on the Interrupting Circumstances (on whom the onus rests) must –

27.2.1 give notice specifying the nature and date of commencement of the Interrupting Circumstances to the other Party as soon as reasonably possible after the commencement thereof; and

27.2.2 give notice of the cessation of the Interrupting Circumstances within 2 (two) days after such cessation.

27.3 No Party is obliged to comply with obligations that are suspended during the period that the Interrupting Circumstances prevail.

27.4 The Party whose performance is interrupted by the Interrupting Circumstances is entitled to extend the Term by a period equal to the time that its performance is so interrupted, provided that such Party gives notice to that effect as provided above.

27.5 In this Agreement, *vis major* and *force majeure* -

27.5.1 include acts or omissions of any government or similar authority, any law or regulatory provision having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, prohibition of exports, rationing of supplies, flood, storm, fire, epidemics or (without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of the Party claiming *force majeure* or *vis major* and comprehended in the terms *force majeure* or *vis major*, provided that labour disputes (including, without limitation, strikes, go-slows or lockouts) are not included as events *vis major* or *force majeure* except to the extent that any such labour disputes delaying or preventing the affected Party's performance take place in the Republic of South Africa and are countrywide and industry-wide; but

27.5.2 exclude any lack of authorisation, licence, permit or approval necessary for the performance of an obligation under this Agreement.

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 Department Service Provider

28. DOMICILIA CITANDI ET EXECUTANDI

28.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

28.1.1 Department:

Physical: Imbumba House
75 Fox Street
Johannesburg

Postal: Private Bag X12
Marshalltown
2107

For attention: The Head: Gauteng Provincial Treasury

28.1.2 Service Provider:

Physical:

Postal:

For attention:

28.2 Either Party may by notice to the other Party change the physical or postal address chosen as its *domicilium citandi et executandi* to another physical or postal address in the Republic of South Africa, provided that the change becomes effective on the 14th (fourteenth) working day from the deemed receipt of the notice by the other Party.

29. NOTICE

29.1 Any notice or communication required or permitted to be given in terms of this Agreement is valid and effective only if in writing.

29.2 A notice delivered by hand to a Party during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* is deemed to have been received on the day of delivery.

Initials: _____ Department _____ Service Provider _____

- 29.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party is adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

30. GOVERNING LAW

This Agreement is governed by and interpreted in accordance with the law of the Republic of South Africa.

31. RELATIONSHIP OF THE PARTIES

The Parties' relationship is that of independent contracting Parties and is governed by this Agreement. Nothing in this Agreement is intended, nor may be interpreted or deemed to constitute any Party to be a partner, employee, agent or representative of the other Party. It is not the intention of the Parties to create, nor may this Agreement be construed to create any commercial or other partnership. No Party may act for or assume any obligation or responsibility on behalf of the other Party without the latter's prior written consent. No Party may hold itself out as a partner of the other Party.

32. SEVERABILITY

Any provision in this Agreement which is illegal, invalid or unenforceable is ineffective to the extent of such prohibition or unenforceability and must be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.

33. ASSURANCE THAT THIS AGREEMENT IS BINDING

- 33.1 The Parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate proceedings necessary to cause this Agreement to be binding on themselves.
- 33.2 A Party must, if requested by the other Party, furnish to the latter sufficient evidence of the authority of a person who takes any action or executes any documents under this Agreement on behalf of the Party so requested.

Initials: _____ _____
 Department Service Provider

34. GENERAL

- 34.1 This Agreement constitutes the whole agreement between the Parties.
- 34.2 No amendment, consensual cancellation of this Agreement or settlement of any dispute arising under this Agreement, is binding unless recorded in a written document that clearly specifies the intention to amend, cancel or settle and signed by a duly authorised representative of each Party.
- 34.3 No extension of time, waiver, relaxation, suspension of or discharge from any provision of this Agreement is binding unless recorded in a written document that clearly specifies the intention to extend, waive, relax, suspend or discharge and signed by the Party granting such extension, waiver, relaxation, suspension or discharge. Any extension, waiver, relaxation, suspension or discharge must be construed as relating strictly to the matter in respect whereof it was given.
- 34.4 An extension of time, waiver, relaxation or suspension of any provision of this Agreement does not operate as an estoppel against any Party in respect of its rights under this Agreement, nor does it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 34.5 The Service Provider's Broad-based Black Economic Empowerment (BBBEE) status will be monitored on a bi-annual basis and should it be found to be unsatisfactory, the Service Provider must rectify its BBBEE status within a reasonable period, failing which this Agreement may be terminated.
- 34.6 Each Party must pay its own cost pertaining to the negotiation, drafting and execution of this Agreement.

Initials: _____ _____
 Department Service Provider

SIGNED ON BEHALF OF EACH PARTY AS FOLLOWS:

SIGNED AT JOHANNESBURG, REPUBLIC OF SOUTH AFRICA ON

THIS _____ DAY OF _____ YEAR

FOR AND BEHALF OF:

THE SERVICE PROVIDER_____
(NAME AND SURNAME)_____
(ID NUMBER)_____
(DESIGNATION)_____
(SIGNATURE)

SIGNED AT JOHANNESBURG, REPUBLIC OF SOUTH AFRICA ON

THIS _____ DAY OF _____ YEAR

FOR AND BEHALF OF:

THE DEPARTMENT_____
(NAME AND SURNAME)_____
(PERSAL NUMBER)_____
(DESIGNATION)_____
(SIGNATURE)

Initials:

Department_____
Service Provider