



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

**USD WS 14 2021/22**

<b>TENDER DESCRIPTION:</b>	<b>TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LOX AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS</b>
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**NAME OF BIDDER: .....**

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

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

Prepared by:  
City of Tshwane Metropolitan Municipality  
C de Wet Centre  
175 Es'kia Mphahlele Drive  
Pretoria West  
0001  
Tel: 012 358 9999

**BID CLOSING DATE**

**07 DECEMBER 2021**

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



## CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: UTILITY SERVICES- WATER AND SANITATION

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
USD WS 14 2021/22	TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LOX AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS	UTILITY SERVICES- WATER AND SANITATION	<p>Sipho Madhlabane / Lesiba Tema  <a href="mailto:siphomadh@tshwane.gov.za">siphomadh@tshwane.gov.za</a> /  <a href="mailto:lesibat@tshwane.gov.za">lesibat@tshwane.gov.za</a>            (012) 358 2025 / (012) 358 1691</p> <p>Lukkiet Thobejane  <a href="mailto:Lukkiet3@tshwane.gov.za">Lukkiet3@tshwane.gov.za</a>            (012) 358 6282</p>	N/A	07 December 2021 at 10:00

**THE DOCUMENT IS DOWNLOADABLE ON THE E-TENDER PORTAL.**

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

**Procurement Advice Centre**  
**C De Wet Centre**  
**175 Es'kia Mphahlele Drive (previously DF Malan Drive)**  
**Pretoria West**  
**fMD0183**

Documents must be deposited in the bid box not later than **10:00 on 07 December 2021** when bids will be opened in public.

- Technical enquiries: Sipho Madhlabane (012 358 2025  
or [siphomadh@tshwane.gov.za](mailto:siphomadh@tshwane.gov.za))
- Supply chain enquiries: Lukkiet Thobejane (012 358 6282  
or [lukkiet3@tshwane.gov.za](mailto:lukkiet3@tshwane.gov.za))

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

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

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## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

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

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

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**Bidder**

## CERTIFICATE OF AUTHORITY FOR SIGNATORY

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

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

### A. COMPANY

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

An example is shown below:

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

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

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

**DATE:** .....

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

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

2. ....

## B. PARTNERSHIP

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

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

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

.....	.....	.....
Signature	Signature	Signature

.....	.....	.....
Date	Date	Date

## C. ONE-PERSON BUSINESS

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

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



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

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

An example is shown below:

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

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

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

**DATE:** .....

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

**WITNESSES:**      1. ....

                         2. ....

## E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

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

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

## **Utility Services Department**

### **BID NAME**

### **TENDER FOR THE INSTALLATION OF**

LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LOX AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS.

### **BID NUMBER**

USD WS 14 2021/22

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

Tender for the installation of Liquid Oxygen (LOX) and Nitrogen Tanks and other equipment as well as supply and delivery of LOX and Nitrogen Gas at the Temba Water Treatment Works (WTW) and Roodeplaat Water Treatment Works (WTW) for generation of ozone for a period of 3 years.

#### **2. BACKGROUND**

Temba Water Treatment Works provides 120 million liters of water per day to the communities of Temba, Hammanskraal and other local Municipalities. The Water Treatment Works (WTW) has faced significant challenges in terms of water quality due to the very poor raw water quality from the Leeuwkraal Dam. These challenges have caused taste, odor and colour problems in the drinking water quality which resulted in numerous complaints from the public. Due to the challenges, the City of Tshwane upgraded the treatment process to include Ozone and assist in improving the quality of water produced to meet SANS 241:2015 standard for drinking water.

Roodeplaat Water Treatment Works provide 60 million liters per day to the communities of Montana, Derdepoort, Kameeldrift. The Water Treatment Works has faced significant challenges in terms of water quality due to the poor raw water quality from Roodeplaat Dam. Due to the challenges, the City of Tshwane upgraded the treatment processes to include Ozone and assist in improving the quality of water produced to meet SANS 241:2015 standard for drinking water.

### 3. PROJECT SCOPE

The Roodeplaat and Temba Water Treatment Works (WTW) consumes LOX in the manufacturing of ozone.

The tender should make provision for the supply and installation of LOX and Nitrogen storage tanks and all other required equipment, as well as the rental and maintenance of such equipment and the supply of products for a period of 3 years.

The tender further provide for the installation of a second 30t LOX tank if so required.

The LOX will comply with the following specifications:

Gas	O <sub>2</sub>	
LOX:		
Oxygen purity	98 - 100	wt%
Nitrogen addition	2.3	
Dew point at 1 bar abs	≤ -65	°C
Oil content	≤ 0.1	ppm
Contamination: particle size	≤ 0.01	µm
Hydrocarbons	≤ 20	ppm
Inlet pressure	3 – 8	bar g
Operating pressure	1.2 <sup>±0.1</sup>	bar g
Outlet pressure	< 0.8	bar g
Temperature (inlet)	5 – 40	°C
Gas flow, adjustable	31.4 – 314	Nm <sup>3</sup> /h
Maximum mass flow	450	kg/h
Adjustable range of ozone production	20 -100	%
Ozone concentration, adjustable	Up to 14	wt%

## 4 SPECIFICATIONS

### 4.1 ITEM 1 – CRYOGENIC LOX AND NITROGEN EQUIPMENT INSTALLATION

#### 4.1.1 Environment and OHS compliance

The supplier shall remain responsible to perform the necessary risk assessments in terms of environmental impact and occupational and health aspects. The installation shall at all times be in compliance with approved inspectorate authority GNR734 of 15 July 2009 and safety act specifications.

#### 4.1.2 Plinth and fencing details

The supplier will use the constructed plinths to erect cryogenic cylinder.

#### 4.1.3 Equipment size

##### 4.1.3.1 TEMBA WATER TREATMENT WORKS

The supplier shall supply, install, test and commission the following systems:

##### Storage supply of bulk liquid oxygen

- 2 x 40 m Oxygen tank (Capacity of 65 Tons liquid oxygen)
- 4 x 40 m Vaporizers (Sufficient for 2200Nm<sup>3</sup>/hr capacity)
- 1 x Telemetry system
- 1 x Pressure control system
- Stainless steel tank pad piping
- Related ancillary equipment with vaporizers
- Maximum gas consumption 1800 kg /hr
- Maximum pressure 2.8 – 3.2 bar

##### Storage supply of bulk liquid Nitrogen

- 1 x 20 m Nitrogen Tank liquid (Capacity of 15 tons nitrogen)
- 1 x 20 m Vaporizer (Sufficient for 569 Nm<sup>3</sup>/hr capacity)
- 1 x Telemetry system
- 1 x Pressure control system
- Stainless steel tank pad piping
- Related ancillary equipment with vaporizers
- Maximum gas consumption 42 kg /hr

#### 4.1.3.2 ROODEPLAAT WATER TREATMENT WORKS

##### Storage supply of bulk liquid oxygen

- 1 x 30 m Oxygen tank (Capacity of 30 Tons liquid oxygen)
- 2 x 400 kg/hr Vaporizers
- 1 x Telemetry system
- 1 x Pressure control system
- Related ancillary equipment with vaporizers
- Maximum gas consumption 302 kg/hr
- Maximum pressure 2.8 – 3.2 bar

The installation shall be in accordance with ISO9001:2015 and fully compliant with the requirements of the Occupational Health and Safety Act. Provision was made for a future 30 ton cryogenic LOX tank for Roodeplaat WTW.

#### 4.1.4 Support requirements

The bidder shall submit the tender with the maintenance requirements of the LOX and Nitrogen installation and auxiliary equipment as well as the emergency spares available.

#### 4.1.5 Inspection / servicing / maintenance requirements report

The supplier shall submit an annual report and issue a servicing certificate of the bulk gas tank and auxiliary equipment and confirm that the following services were executed:

- i Bulk gas tank inspected for leaks.
- ii Seal tank for leaks where necessary
- iii Vaporizer functioning correctly
- iv Service regulators / gas flow meters
- v That the bulk gas tank and auxiliary equipment are according to the Occupational Health and Safety Act including the specifications of a high risk installation,

vi Install and maintain for the rental period all Occupational Health and Safety signs including the required colours on gas pipelining as specified by the Occupational Health and Safety Law,

vii Issue calibration certificates of measuring devices.

## 4.2 ITEM 2 – SUPPLY AND DELIVERY OF LOX AND NITROGEN

### 4.2.1 Letter of undertaking or Guarantees

The supplier must submit a written letter of undertaking to guarantee the following:

- i) The supplier shall install a telemetry system that will automatically monitor the level of liquid in the storage tanks. The supplier and City of Tshwane will be alerted by the system when the liquid reaches a certain alarm level.
- ii) Provision shall be made by the supplier to store and have LOX and Nitrogen available in times of gas shortages, servicing and/or extensions of LOX plants nationwide.
- iii) A copy of the certificate of analysis certifying that the LOX and Nitrogen has been produced in accordance with this specification and found to conform to the specifications as stipulated in the scope.

### 4.2.2 Gas Usage

It is estimated that the City of Tshwane (Temba WTW) will require on average approximately 673 000 kg LOX and 16 000 kg Nitrogen per month at the Temba Water Treatment Works for the purpose of ozone generation. The demand of LOX and Nitrogen will be based on Ozone generation and water treatment capacity of 120 Mega litres per day. The City of Tshwane does not, however, bind itself to purchase this or any quantity as the LOX and Nitrogen requirements are dependent on the amount of ozone required to treat the water.

It is estimated that the Municipality's will require on average approximately 120 000 kg LOX per month at the Roodeplaat Water Treatment Works for the purpose of ozone generation. The minimum demand can be as low as 0 – 90 000 kg and as high as 225 000 kg LOX per month based on the ozone production rate at 65 MI/d. The Municipality does not, however, bind itself to purchase this or any quantity as the LOX requirements are dependent on the amount of ozone required to treat the water.

### 4.2.3 Gas Storage

The storage capacity (Temba WTW) of 3 days (65 tons) at the maximum LOX consumption is required. The installation shall also be able to vaporize sufficient

amounts of LOX to meet the requirements of the ozone generation equipment under all environmental conditions. The total vaporizing requirements is estimated at 1800 kg/hr Oxygen and 42 kg/hr Nitrogen.

The storage capacity (Roodeplaat WTW) of 3 days (30 tons) at the maximum LOX consumption shall be provided. The installation shall also be able to vaporize sufficient amounts of LOX to meet the requirements of the ozone generation equipment under all environmental conditions. The total vaporizing requirements is estimated at 400 kg/hr.

#### 4.2.4 Gas Metering

The supplier shall supply a suitable gas metering device to indicate instantaneous and totalized flow of LOX and Nitrogen.

Calibration certificate of the gas metering device must be issued every three months.

#### 4.2.5 Price

The prices tendered shall include the supply and delivery of LOX, Nitrogen and rental of LOX and Nitrogen equipment, over a period of three (3) years, as and when required.

The prices shall be a variable cost. The variable cost shall include the cost of tank rental as well as product and transport of the LOX and Nitrogen product to site. Annual Price Escalation is applicable for this contract.

The supplier shall indicate in pricing schedule of the LOX and Nitrogen variable costs.

### 4.3 ITEM 3 – RENTAL AND MAINTENANCE OF LOX EQUIPMENT

#### 4.3.1 Price

The fixed cost shall include: maintenance cost, rental cost of equipment and all legal and other requirements.

#### 4.3.2 Inspection/Servicing/Maintenance requirements

The supplier shall submit an annual report and issue a servicing certificate of the bulk gas tank and auxiliary equipment that the following services were executed:

- i Bulk gas tank emptied,
- ii Sealed where necessary,
- iii Vaporizer functioning correctly,
- iv Regulators no leakages,
- v That the bulk gas tank and auxiliary equipment are according to the Occupational Health and Safety Act including the specifications of a high risk installation,



- vi Install all Occupational Health and Safety signs including the required colours on gas pipelining as specified by the Occupational Health and Safety Act.
- vii Calibration certificates of measuring devices.

#### 4.4 ITEM 4– REMOVAL OF EQUIPMENT AT END OF NEW THREE YEAR PERIOD

Each tenderer will specify the removal cost of their equipment after the 3 year period. This price shall include all costs for the removal of plant and equipment and no escalation will be applicable. The City of Tshwane will pay the removal cost directly to the supplier whose contract is about to lapse. If the active contractor is not reappointed then the contractor must remove all his equipment on or before 7 calendar days starting from the date of the letter of appointment for the newly appointed contractor. If not, the City of Tshwane will appoint a contractor to remove all the equipment and the exiting contractor will be liable for all cost thereof.

The tender will be awarded as a whole, i.e. to one service provider.

### 5 EVALUATION CRITERIA

The bid will be evaluated in 4 stages, namely:

Stage 1: Administrative compliance

Stage 2: Mandatory requirements

Stage 3: Functionality

Stage 4: The Preferential point system

#### 5.1 Stage 1 (Administrative compliance)

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

#### 5.2 Stage 2 (Mandatory Requirements)

The following items are not negotiable. Failure to submit below documents will lead to disqualification.

5.2.1 A copy of a certificate by a credible quality authority confirming that the product (LOX) has been produced in accordance with a recognised quality standard (latest ISO 9001:2015).

5.2.2 A comprehensive material (LOX) safety data sheet (MSDS) must be submitted.

5.2.3 The tanks meets the requirement equipment regulation of an AIA (Approved Inspectorate Authority) GNR734 of 15 July 2009 issued by Chief Inspector Department of Labour.

### 5.3 Functionality

#### SCORECARD FOR FUNCTIONALITY

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	HIGH POSSIBLE SCORE
Documentary proof of years' experience as a supplier of bulk gas.	<ul style="list-style-type: none"> <li>• 1-3 years</li> <li>• 4+ years</li> </ul>	3 5	8	40
Local Economic Participation  (Proof in the form of a municipal water and lights invoice or a lease agreement from the bidder's local government where the business resides will be accepted)	<ul style="list-style-type: none"> <li>• enterprises located within CoT municipal area</li> <li>• enterprise located in Gauteng</li> <li>• enterprise located elsewhere in South Africa</li> </ul>	3  2  1	5	15
Proof in the form of certificate which certifies that manufacture is a member of the South African compressed gases association.	Submit a Valid certified certificate.  No certificate	3	5	15

		0		
Technical personnel (Technician) (Electrical/Instrumentation/Mechanical) (CV's Technical qualification, experience and competence	Submit proof of qualification (national diploma or trade certificate) and experience.  1-2 years  3-4 years  5+years	2  4  5	6	30

Bids that do not achieve a minimum score of 70 (out of 100) for functionality will not be evaluated further.

#### 5.4 Stage 4 (Preferential Point System)

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

- 90 points for price
- 10 points for B-BBEE

### 6 SUBCONTRACTING

The Bidder will not be permitted to subcontract any part of this contract.

### 7 TYPE OF AGREEMENT REQUIRED

Service Level Agreement

### 8 VALIDITY PERIOD

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

## 9 PRICING SCHEDULE

### TEMBA WTW

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
1	Supply and installation of two cryogenic LOX storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	Supply and installation cost  Sum	2		R
2	Supply and install Flow mixing control panel including signal for level control, flow and dew point. (Telemetry)	Supply and installation cost  sum	1		
3	Supply and installation of one nitrogen tank with one of 42 kg/h vaporizer appurtenance and ancillary equipment	Supply and installation cost sum	1		
4	Supply and install 300m length piping from oxygen and nitrogen station respectively	Supply and installation cost	1		
5	Supply and delivery of LOX	Variable R/kg (Delivered)	1339200 kg		R
6	Supply and delivery of Nitrogen gas	Variable R/kg (Delivered)	16 000 kg		R
7	Rental and maintenance of TWO 65 tons cryogenic LOX storage tank and ONE Nitrogen storage tank with TWO of 1800kg/hr vaporizers	Fixed cost  R/ Month	36		R

	appurtenances and ancillary equipment				
8	Removal of tenderer's storage tanks and equipment after the 3year period.	Sum			R
	Sub Total (excl. VAT)				
	Value Added Tax at 15%				
	Total BID Amount (Sum of Items 1-7)				

SIGNATURE OF TENDERER:.....

## ROODEPLAAT WTW

Item	Description	Unit	Quantity	Rate	Total Price (excl VAT)
1	Supply and installation of ONE 30ton cryogenic LOX storage tank with TWO off 400kg/hr vaporizers appurtenances and ancillary equipment	Installation cost  Sum	1		R
2.1	Supply and delivery of LOX between 0-100000 kg/month	Variable cost/kg	900 000		R
2.2	Supply and delivery of LOX between 100000-150000 kg/month	Variable cost/kg	2 860 000		R
2.3	Supply and delivery of LOX between 150000-250000 kg/month	Variable cost/kg	450 000		R
3	Rental and maintenance of ONE 30 ton cryogenic LOX storage tank with TWO off 40kg/hr vaporizers appurtenances and ancillary equipment	Fixed cost per month	36		R
4	Supply and installation of ONE optional additional 30ton cryogenic LOX storage tank with TWO off 400kg/hr vaporizers appurtenances and ancillary equipment	Installation cost  Sum	1		R
5	Rental and maintenance of ONE optional additional 30ton cryogenic LOX storage tank with TWO off 400kg/hr vaporizers appurtenances and ancillary equipment for	Fixed cost per month  Rand	36		R

	a duration of three years				
6	Removal of tenderer's storage tanks and equipment after the 3 year period.	Sum			R
	Sub Total (excl VAT)				
	Value Added Tax at 15%				
	Total BID Amount (Sum of Items 1-6)				

SIGNATURE OF TENDERER:.....

PLANT	TOTAL BID PRICE
Temba (Sum of items 1-8)	
Roodeplaat (Sum of items 1-6)	
GRAND TOTAL (Temba + Roodeplaat)	

## 15 MARKET ANALYSIS

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

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

the third highest points. If a market-related price is not agreed, the city reserves the right to cancel the tender.

## 16 SERVICE LEVEL AGREEMENTS

SLA included



## PART A

## INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	USD WS 14 2021/22	CLOSING DATE:	07 December 2021	CLOSING TIME:	10:00
DESCRIPTION	<b>TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LOX AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS</b>				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

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

<b>Procurement Advice Centre at the entrance of C de Wet Centre</b>					
<b>Supply Chain Management</b>					
<b>175 Es'kia Mphahlele Drive</b>					
<b>Pretoria West</b>					
<b>GPS coordinates: 25.750151°S, 28.173666°E</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	

B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>			
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	David Ntsowe Sipho Madhlabane / Lesiba Tema (012) 358 2025 / (012) 358 1691
CONTACT PERSON	Lukkiet N Thobejane	TELEPHONE NUMBER	012 358 1691
TELEPHONE NUMBER	012 358 6282	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	<a href="mailto:siphomadh@tshwane.gov.za">siphomadh@tshwane.gov.za</a> <a href="mailto:lesibat@tshwane.gov.za">lesibat@tshwane.gov.za</a>
EMAIL ADDRESS	<a href="mailto:lukkiet3@tshwane.gov.za">lukkiet3@tshwane.gov.za</a>		

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION</b>	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.2	DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.3	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.4	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.5	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES <input type="checkbox"/> NO <input type="checkbox"/>
<p><b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b></p>	

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

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

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

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

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

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

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

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

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

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

\* Delete if not applicable

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

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

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

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

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

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

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

## PRICE ADJUSTMENTS

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

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

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

Where:

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

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

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

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

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


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

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

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

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

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

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

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



## DECLARATION OF INTEREST

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

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

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

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

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

3.9.1 If yes, furnish particulars. ....

.....

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

3.10.1 If yes, furnish particulars. ....

.....

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

3.11.1 If yes, furnish particulars. ....

.....

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

3.12.1 If yes, furnish particulars. ....

.....

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

3.13.1 If yes, furnish particulars. ....

.....

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

3.14.1 If yes, furnish particulars: ....

.....

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

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Capacity**

.....

**Date**

.....

**Name of Bidder**



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

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

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

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

.....  
.....

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

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

2.2 If yes, provide particulars.

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

3 Has any contract been awarded to you by an organ of state **\*YES / NO**

during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

3.1 If yes, furnish particulars

.....  
.....

4.1 Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic? **\*YES / NO**

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

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

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

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

### 1. GENERAL CONDITIONS

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

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

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

1.3 Preference points for this bid shall be awarded for:

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

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

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

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

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

## 2. DEFINITIONS

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



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

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

### 3. ADJUDICATION USING A POINT SYSTEM

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

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

#### 4. POINTS AWARDED FOR PRICE

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

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

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

Where

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

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

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

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

- 5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

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

## 6. BID DECLARATION

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

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

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

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

## 8. SUB-CONTRACTING

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

*(Tick applicable box)*

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

- 8.1.1. If yes, indicate:

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

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

**(Tick applicable box)**

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

## 9. DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of company/firm: .....
- 9.2 VAT number: .....
- 9.3 Company registration number: .....
- 9.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

## 9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

## 9.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

## 9.7 MUNICIPAL INFORMATION

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

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

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

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

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

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

WITNESSES

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

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE .....

ADDRESS: .....  
.....  
.....

## CONTRACT FORM: RENDERING OF SERVICES

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **USD WS 14 2021/22** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.

5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

**WITNESSES**

1 .....

2 .....

DATE: .....

**CONTRACT FORM: RENDERING OF SERVICES**

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

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

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

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

<b>WITNESSES</b>	
1	.....
2	.....
DATE: .....	



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

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

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

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

### CERTIFICATION

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

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

.....  
**Signature**

.....  
**Date**

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid: **USD WS 14 2021/22**

**TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LOX AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS**

(Bid Number and Description)

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

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

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

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

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

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

### GENERAL CONDITIONS OF CONTRACT

July 2010

#### NOTES

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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

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

### **1. Application**

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

### **3. General**

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

	3.2	With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>
<b>4. Standards</b>	4.1	The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
<b>5. Use of contract documents and information inspection.</b>	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.
<b>6. Patent rights</b>	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.
<b>7. Performance security</b>	7.1	Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
	7.2	The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
	7.3	The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms: <ul style="list-style-type: none"> <li>(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</li> <li>(b) a cashier's or certified cheque</li> </ul>
	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.
<b>8. Inspections, tests and analyses</b>	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.

<b>11. Insurance</b>	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.
<b>12. Transportation</b>	12.1	Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
<b>13. Incidental services, services</b>	13.1	<p>The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:</p> <ul style="list-style-type: none"> <li>(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;</li> <li>(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;</li> <li>(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;</li> <li>(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</li> <li>(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.</li> </ul>
	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.
<b>14. Spare parts</b>	14.1	<p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> <li>(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and</li> <li>(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.</li> </ul> </li> </ul>
<b>15. Warranty</b>	15.1	The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
	15.2	This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

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

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

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties**
- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

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

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

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

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

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

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

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

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

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

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

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



		reasonable alternative means for performance not prevented by the force majeure event.
<b>26. Termination for insolvency</b>	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
<b>27. Settlement of Disputes</b>	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, (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.
<b>28. Limitation of liability</b>	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;  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  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.
<b>29. Governing language</b>	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

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

Js General Conditions of Contract (revised July 2010)

## **SERVICE-LEVEL AGREEMENT**

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

AND

\_\_\_\_\_  
**Registration number:** \_\_\_\_\_

## SERVICE-LEVEL AGREEMENT

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

A municipality, as described in Section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in Section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by Ms Mmaseabata Mutlaneng in his/her capacity as acting City Manager duly authorised thereto under and by virtue of a resolution passed on 26 January 2012, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement.

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

**AND**

\_\_\_\_\_  
**Registration number:** \_\_\_\_\_

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

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

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**ANNEXURE A: BOARD RESOLUTION**

**ANNEXURE B: SCOPE OF WORK AND DELIVERABLES**

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## **RECORDAL:**

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

**AND WHEREAS** the City wishes to appoint the service provider;

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

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

**NOW THEREFORE**, the parties have agreed to enter into this agreement, in terms of which the service provider shall provide the services in the service areas and/or delivery area, and provide maintenance and support thereof to the City in accordance with the terms and subject to the conditions of this agreement.

## **1. DEFINITIONS**

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

- 1.1 **“Agreement”** means this service-level agreement and shall include any annexures, schedules, attachments, appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;
- 1.2 **“Business day”** means any day from Monday to Friday, excluding public holidays, as defined in the Public Holidays Act, 1994 (Act 36 of 1994), as amended from time to time;
- 1.3 **“Business week”** means five consecutive business days, excluding public holidays as defined in the Public Holidays Act, 1994;
- 1.4 **“City”** means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- 1.5 **“Contact persons”** means persons identified by the parties as persons who are responsible for the execution of the agreement and whose names are set out in Clause 35 below and who can be substituted in writing from time to time;
- 1.6 **“Contract price”** means the amount reflected as the contract price in Clause 9 below;
- 1.7 **“Contract period”** means the contract period as reflected in Clause 6 below;
- 1.8 **“Effective date”**, notwithstanding the signature date, means \_\_\_\_\_;
- 1.9 **“Intellectual property”** means patents, designs, know-how, copyright, trademarks and all rights having an equivalent or similar effect which may exist anywhere in the world, introduced and required by either party to give effect to

their obligations under this agreement, owned in whole or in part by, or licenced to either party before the commencement date or developed after the commencement date, and includes all further additions and improvements to the intellectual property, otherwise pursuant to this agreement;

- 1.10 **“Month”** means a calendar month;
- 1.11 **“Parties”** means the City of Tshwane and the service provider and “party” means either of these, as the context requires;
- 1.12 **“Services”** means services to be provided by the service provider to the City as detailed in Clause 8 below;
- 1.13 **“Service provider”** means \_\_\_\_\_, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number: \_\_\_\_\_;
- 1.14 **“Signature date”** means the date of signature of this agreement by the party signing last;
- 1.15 **“Subcontract”** means any contract, agreement or proposed contract between the service provider and any third party whereby that third party agrees to provide to the service provider the services or any part thereof;
- 1.16 **“Subcontractor”** means the third party with whom the service provider enters into a subcontract;
- 1.17 **“Tax invoice”** means the document, as required by Section 20 of the Value-added Tax Act, 1991 (Act 89 of 1991), as amended from time to time;
- 1.18 **“VAT”** means value-added tax, as defined in terms of the Value-added Tax Act, 1991.

## **2. INTERPRETATION**

- 2.1 Headings and subheadings are inserted for information purposes only and shall not be used in the interpretation of this agreement.
- 2.2 Unless the context clearly indicates a contrary intention, any word that connotes –
  - 2.2.1 any singular shall be deemed to include a reference to the plural and *vice versa*;
  - 2.2.2 any one gender shall be deemed to include a reference to any other gender; and
  - 2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.



- 2.3 The expiry or termination of this agreement shall not affect provisions of this agreement, which expressly provide that they will operate after any such expiry or termination of this agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this agreement, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 2.5 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.6 Any reference to any legislation is a reference to such legislation as at the signature date and as amended or re-enacted from time to time.
- 2.7 If any provision in a definition is a substantive provision that confers any rights or imposing any obligations on any party, then, notwithstanding that it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this agreement.

### **3. APPOINTMENT**

The City hereby appoints the service provider, who accepts such appointment, to provide the services in accordance with the terms and subject to the conditions of this agreement.

### **4. PURPOSE OF THE AGREEMENT**

- 4.1 The purpose of this agreement is to –
- 4.1.1 formalise and regulate the working relationship between the parties;
  - 4.1.2 set out the roles and responsibilities of the parties; and
  - 4.1.3 define process and procedures to be followed by the parties.

### **5. RELATIONSHIP**

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

## **6. DURATION**

This agreement shall commence on the effective date and shall subsist for \_\_\_\_\_ years, unless terminated earlier, pursuant to Clause 32 below.

## **7. CONTACT PERSON**

- 7.1 The work to be performed by the service provider hereunder will be supervised by City's contact person referred to in Clause 35 below.
- 7.2 The parties shall notify each other in writing from time to time of the details of the nominated contact person.
- 7.3 The contact persons shall liaise and update each other on the progress of the services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the services.
- 7.4 Either party may substitute a contact person at its discretion, provided that each party shall give the other party reasonable notice of such substitution and will provide replacement employees of equivalent ability.
- 7.5 Without derogating from the foregoing, should either party replace a contact person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of handover and overlap takes place, at its cost, between the new and the incumbent contact person.

## **8. SCOPE OF GENERAL SERVICES**

The service provider shall, for the duration of this agreement, provide the services set out in the scope of work and in accordance with the deliverables and milestones attached hereto as Annexure B, including but not limited to the maintenance and support services, as provided for in Clause 20 below.

## **9. PRICE AND PAYMENT**

- 9.1 The City shall pay to the service provider the contract price in the sum of R\_\_\_\_\_ (\_\_\_\_\_ rand), payable in accordance with the terms of the appointment letter, attached hereto as Annexure C, and subject to deliverables.
- 9.2 All payments under this agreement shall be made by electronic fund transfer or other forms of payment as the parties may agree upon from time to time, upon receipt of valid and undisputed tax invoices and month-end statements together with the supporting documentation from the service provider, once the undisputed tax invoices or such portion of the tax invoices which are undisputed become due and payable.
- 9.3 All amounts and other sums payable in terms of this agreement and schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

- 9.4 Unless otherwise provided in the schedules, valid tax invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by the City within 30 (thirty) days after the date of receipt by the City of the service provider's statement together with the relevant valid and undisputed tax invoice(s) and supporting documentation, but in any event no later than 90 (ninety) days of receipt of such statement.
- 9.5 Where the payment of any valid and undisputed tax invoice, or any part of the said tax invoice which is not in dispute, is not made by the due date, the service provider shall be entitled to charge interest on the outstanding amount, at the service provider's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is fully paid.
- 9.6 There shall be no interest levied on a tax invoice that is in dispute between the parties.
- 9.7 The City shall pay the amount reflected on a tax invoice once the City's contact person has verified that the services set out in a schedule have been rendered and the tax invoice amount has been approved by the City.
- 9.8 All tax invoices shall be addressed to the City's contact person.
- 9.9 All payments shall be transferred by the City to the service provider electronically into the service provider's bank account, the details of which are as follows:
- Bank: \_\_\_\_\_  
Account type: \_\_\_\_\_  
Account number: \_\_\_\_\_  
Branch number: \_\_\_\_\_
- 9.10 Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the service provider to the City. The City shall not be liable for any costs or damages suffered by the service provider as a result of such late payment.

## **10. PRICE RESTRUCTURING**

- 10.1 The service provider shall be subject to a price review every year.
- 10.2 The City shall embark on a benchmarking exercise every 12 (twelve) months where the City shall benchmark the service provider's contract price against the prevailing market rates.
- 10.3 In the event that it emerges that the service provider's charges regarding the contract price and other charges under this agreement are materially higher than the reasonable benchmark ascertained by the City or that the City can acquire similar services of a like quality from another supplier at a total delivered cost that is lower than the total delivered cost of the services acquired hereunder from the service provider, the City shall have the right to notify the service provider of such total delivered cost and the service provider shall have an opportunity to adjust the contract price and any other charges hereunder, on

such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.

10.4 If the service provider fails to do so or cannot legally do so, the City may –

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

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

10.4.3 continue under this agreement.

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

## **11. SERVICE LEVELS**

11.1 The service provider recognises that the City has entered into this agreement relying specifically on the service provider's representations regarding service levels including, *inter alia* –

11.1.1 capacity allocations in accordance with the service to be provided; and

11.1.2 all work to be performed and services rendered under this agreement shall comply with industry norms and best practice acceptable within the services industry and shall be executed by the service provider to the total satisfaction of the City.

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

11.3 Among others, the service provider shall comply with and provide the services as set out in Clause 8 above.

## **12. WITHHOLDING OF PERFORMANCE**

The service provider may not, under any circumstances, including, without limitation, non-payment by the City, withhold any services from the City during the currency of this agreement, unless it validly terminates this agreement, in terms of Clause 32 below.

### **13. PENALTY**

- 13.1 Should the service provider fail to comply with its obligations in terms of this agreement, the City may –
  - 13.1.1 exercise its rights in terms of Clause 31 below; or
  - 13.1.2 impose a penalty on the service provider.
- 13.2 An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.
- 13.3 Should the City choose to impose a penalty on the service provider, the City shall provide the service provider with a written notice requiring the service provider to remedy the default within 7 (seven) days from the date of delivery of the notice.
- 13.4 Should the service provider fail to remedy the default within 7 (seven) days after receiving the notice, the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, to impose a penalty, which penalty shall be a deduction of 10% of the monthly contract price for the contract period. For the avoidance of doubt, the penalty amount shall be 10% of the monies due for payment to the service provider monthly, in terms of Clause 9 above.
- 13.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the service provider's fault, such dispute shall be dealt with in accordance with Clause 33 below.

### **14. ACCESS**

- 14.1 The City shall allow the service provider reasonable access to its premises, provided that –
  - 14.1.1 access is related to the services to be provided by the service provider; and
  - 14.1.2 the service provider adheres to all rules, regulations and instructions applicable at the City's premises.
- 14.2 The service provider is required to notify the City every month of employees who are to provide services at the service areas and/or delivery areas.
- 14.3 The City shall grant the service provider and/or its employees, referred in Clause 14.2 above, access to its premises to perform its obligations in terms of this agreement.
- 14.4 The service provider and its employees shall at all times, when entering the premises and/or service areas and/or delivery areas of the City, comply with all rules, laws, regulations and policies of the City.

## **15. ORDERS OF GOODS**

- 15.1 The service provider's contact person shall advise the City in writing of the goods required to enable the service provider to render the services. On the order form, the service provider shall set out the quantity, description of goods and the anticipated date of delivery of the goods ("delivery date").
- 15.2 The City shall confirm the order in writing and authorise the service provider to order the goods necessary for the provision of the service.
- 15.3 All orders for goods ordered under Clause 15 shall be for the separate account of the City, the cost of which shall be invoiced to the City by the service provider upon confirmation of the order, in terms of Clause 15.2 above. The City shall not be obliged to order the goods from the service provider and shall be entitled to use any company that it deems most suitable for the provision of the goods.

## **16. DELIVERY OF GOODS**

- 16.1 The service provider shall deliver the goods on the delivery date.
- 16.2 Should the service provider be unable to deliver the goods on the delivery date, the service provider shall inform the City of its inability to deliver the goods, the reason therefor, and shall provide the City with a reasonable alternative delivery date, which, in any event, shall not be more than 14 (fourteen) days from the original delivery date.
- 16.3 In the event that the service provider is unable to deliver the goods on the delivery date 3 (three) times in a period of 6 (six) months, the City shall be entitled to terminate this agreement by giving the service provider one (1) month's written notice to terminate.
- 16.4 Upon delivery of the goods by the service provider, the City's contact person shall sign the delivery document provided by the service provider as acknowledgement of receipt of the goods. Such acknowledgement of receipt shall not constitute an acceptance –
  - 16.4.1 that the goods were received in good condition;
  - 16.4.2 that the goods were free of any defects;
  - 16.4.3 that the goods were fit for the purpose for which they were purchased; and/or
  - 16.4.4 of any terms and conditions of the delivery document.
- 16.5 In the event that the City notifies the service provider, within 5 (five) business days, that the goods delivered are not in accordance with the order, the City shall be entitled to return the goods to the service provider at the service provider's cost and the service provider shall deliver the replacement goods ordered within 5 (five) business days of taking delivery of the defective goods.

## **17. DEFECTIVE GOODS OR LATENT PRODUCTS**

- 17.1 The service provider shall verify whether the goods received are in order and without any defects.
- 17.2 In the event that the City realises that the goods have any defect, including (but not limited to) manufacture and/or latent defects, the City shall inform the service provider in writing within 5 (five) days of becoming aware of the defect ("Notice of Defect").
- 17.3 Upon receipt of the Notice of Defect, the service provider shall immediately deliver replacement goods to the City within 14 (fourteen) business days of receiving the Notice of Defect, referred to in Clause 17.2 above, and replace the defective goods.
- 17.4 The cost of returning and replacing the defective goods shall be borne by the service provider.
- 17.5 The service provider shall be responsible for the replacement amount of any parts of the goods that are to be replaced in terms of this agreement.

## **18. AMENDMENT OR CANCELLATION OF PURCHASE ORDER**

The City is entitled to cancel an order, reschedule delivery of the goods or change the delivery area and delivery date on 14 (fourteen) days' written notice to the service provider.

## **19. INSPECTION**

- 19.1 The City may, at any time, inspect the goods and/or service levels of the service provider in terms of this agreement.
- 19.2 If the City is, at any time, dissatisfied with the service levels, the City shall, within 7 (seven) days, notify the service provider in writing of the failure or default.
- 19.3 The service provider shall immediately upon receipt of written demand by the City remedy such failure or default, within 7 (seven) business days from the date of receipt of the notice, free of charge.
- 19.4 Should the service provider fail to remedy the failure or default referred to above, the City shall have the right to impose penalties as provided for in Clause 12 above or invoke the provisions of clauses and/or Clause 31 below.
  - 19.4.1 To enable the City to determine whether the goods and/or services rendered in terms of this agreement are being complied with, the service provider shall –
    - 19.4.1.1 provide the City with such information as it may reasonably require;
    - 19.4.1.2 allow the City to inspect and take copies of any records of the service provider relating to the goods and/or services, including all hardware, software, data, information, visuals,

procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence; or

- 19.4.1.3 allow the City or its authorised representatives to conduct interviews with any of the service provider's employees, subject to reasonable notice being given to the service provider.

## **19.5 Service provider to provide reasonable assistance**

19.5.1 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the service provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

19.5.2 Any information required to be provided to the City, pursuant to Clause 19, shall be provided by the service provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.

19.5.3 The cost of any inspection contemplated in terms of Clause 19 shall be for the account of the City unless any material irregularity or failure on the part of the service provider is determined by the City in the course of such inspection.

19.6 The inspection contemplated in this agreement will be conducted –

19.6.1 during normal business hours; and

19.6.2 where the circumstances justify it, on reasonable notice to the service provider, with the minimum interference in the provision of the services and the service provider's other operations.

## **20. MAINTENANCE AND SUPPORT**

The essential and critical elements of the maintenance and support to be provided by the service provider to the City shall be detailed in the scope of work attached hereto as Annexure B.

## **21. TRAINING**

If required, the service provider shall, after delivery and installation of the goods, and as part of maintenance and support, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the goods.

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

### **22.1 Service warranties**

22.1.1 The service provider warrants that, in relation to each service provided in terms of this agreement, –



- 22.1.1.1 it has full capacity and authority to enter into and perform this agreement, and that this agreement is executed by duly authorised representatives of the service provider;
- 22.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the services in an expert manner;
- 22.1.1.3 it will discharge its obligations under this agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
- 22.1.1.4 all work performed and services rendered under this agreement shall comply with prevailing practice, standards and specifications within the industry;
- 22.1.1.5 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its personnel and for withholding and remitting income tax for its personnel in conformance with any applicable laws and regulations;
- 22.1.1.6 the use or possession by the City of any materials will not subject the City to any claim for infringement of any intellectual property rights of any third party;
- 22.1.1.7 it will, with promptness and diligence, and in a skilful manner and in accordance with the practices and professional standards of operations, perform services and/or deliver goods;
- 22.1.1.8 its services and/or goods will, in all aspects, comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship;
- 22.1.1.9 it will use and adopt any standards, processes and procedures required under this agreement;
- 22.1.1.10 it shall employ suitably qualified and trained employees to provide the services and/or goods to the City and it shall allocate employees in accordance with the technical skills and knowledge required;
- 22.1.1.11 the goods and/or services will be free from any defects in material and workmanship;
- 22.1.1.12 it will maintain and cause to be maintained the highest standard of workmanship and care in undertaking the services and/or processing the goods;

- 22.1.1.13 it will maintain and cause to be maintained the highest standard of care and diligence in providing the services, maintenance and support;
- 22.1.1.14 it will ensure that all applicable laws are observed;
- 22.1.1.15 without derogating from the generality of the foregoing, it will strictly adhere to any or all laws, regulations and accepted procedures with regard to health, hygiene and the maintaining of the environment in the manufacture, packaging, labelling, identification, storage and transportation of the goods; and
- 22.1.1.16 it guarantees that the goods shall be in good working condition for the warranty and/or maintenance period of the goods, and that the service provider shall be responsible for the costs of repair of the goods should the goods require to be repaired to their normal use.

## **22.2 Indemnity**

22.2.1 The service provider hereby indemnifies the City against any claim which may be brought against the City by the service provider's personnel or a third party arising from the execution of this agreement or which arises against the City as a result of the service provider's breach of any of the provisions of this agreement. This is provided that the City notifies the service provider in writing within a reasonable time, and, in any event, no less than 14 (fourteen) business days of the City becoming aware of any such claim to enable the service provider to take steps to contest it. The City shall provide the service provider with such reasonable assistance as may be necessary to enable the service provider to defend the claim to the extent only that it is in a position to render such assistance. The service provider may, within 5 (five) business days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto. This is provided that the service provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

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

### **23.1 Liability for criminal acts of employees**

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

### **23.2 Character of employees**

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

23.2.2 The service provider shall, at its own cost, conduct all reasonable background checks into its employees before using them to provide the services in terms of this agreement.

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

## **24. STATUTORY AND EMPLOYMENT ISSUES**

24.1 The service provider shall comply with all employment legislation

24.1.1 The service provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, 1995 (Act 66 of 1995), the Basic Conditions of Employment Act, 1977 (Act 75 of 1997), the Employment Equity Act, 1998 (Act 55 of 1998) and any other applicable employment legislation currently in force.

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

### **24.2 No employment**

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

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

The service provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)

and it indemnifies the City against any claim which may arise in respect of such act by its personnel against the City.

## **25. SUBCONTRACTING**

- 25.1 The service provider may not subcontract the whole of or any portion of the services in terms of this agreement to any third party without the prior consent of the City.
- 25.2 In the event the service provider wishes to subcontract the whole of or any portion of the services in terms of this agreement, it shall apply to the City in writing for consent to do so.
- 25.3 In its application, the service provider shall give the name of the subcontractor, the subcontractor's obligations, the proposed date of commencement of the subcontract, which shall include the fees payable to the subcontractor, and a report of the background security check on the subcontractor's suitability, financial and otherwise.
- 25.4 The City may, in its sole and absolute discretion, refuse consent to subcontract. In the event the City approves the subcontracting of the whole of or any portion of the services in terms of this agreement, –
  - 25.4.1 the service provider shall ensure that the subcontractor's BBBEE level is equal or better than that of the service provider, its price is competitive and it has the capacity to provide the service;
  - 25.4.2 such subcontracting shall not absolve the service provider from the responsibility of achieving the service levels or complying with its obligations in terms of this agreement, and the service provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such subcontracting;
  - 25.4.3 the service provider shall, at all times, remain the sole point of contact for the City in respect of the acquisition of services by the City; and
  - 25.4.4 no such subcontracting shall have any effect on the contract price and charges payable by the City to the service provider in terms of this agreement.

## **26. CONFIDENTIALITY**

- 26.1 The service provider acknowledges that all information relating to the City's confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to, operating procedures, quality control procedures, approximate operation personnel requirements, descriptions, trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers and relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business ("confidential information") shall

remain confidential and shall not be made known unless the City has given written consent to do so.

- 26.2 The information provided by the City in the context of this agreement is confidential information and the service provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.
- 26.3 The service provider undertakes to not disclose any such confidential information. However, there will be no obligation of confidentiality or restriction on use where –
  - 26.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving party;
  - 26.3.2 the information was already known to the receiving party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the parties or their affiliates; or
  - 26.3.3 the information was received from a third party not in breach of an obligation of confidentiality.

## **27. INTELLECTUAL PROPERTY RIGHTS**

- 27.1 All intellectual property rights of the contractor and/or third party vest in the contractor and/or third party, as appropriate.
- 27.2 All rights in the City name and logo remain the absolute property of the City.
- 27.3 The contractor warrants that no aspect of the services provided in terms thereof will infringe any patent, design, copyright, trademark, trade secret or other proprietary right of any third party.
- 27.4 The contractor shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any intellectual property rights.
- 27.5 In the event the City becomes aware of any such infringement, the contractor shall, at its cost, defend the City against any claim that the services infringe any such third party intellectual property rights, provided that the City gives notice to the contractor of such claim and the contractor controls the defence thereof. The contractor further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.
- 27.6 Should any claim be made against the City by any third party in terms of Clause 27.1 above, the City shall give the contractor written notice thereof within 3 (three) days of becoming aware of such claim to enable the contractor to take steps to contest it.

27.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the contractor shall, at its discretion and within 30 (thirty) days of the services having been found to infringe, at its own cost, –

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

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

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

27.7.4 withdraw the subject of infringement.

## **28. FORCE MAJEURE**

28.1 For the purposes hereof, “*force majeure*” shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming *force majeure* and comprehended in the terms thereof.

28.2 If *force majeure* causes delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement shall be suspended for the period agreed in writing between the parties.

28.3 In the event of circumstances arising which the other party believes that it constitutes a *force majeure* (“the affected party”), such affected party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other party. The parties shall agree, in writing, to suspend the implementation of this agreement for a specific period (“agreed period”).

28.4 In the event that both parties reasonably believe that the affected party shall be unable to continue to perform its obligations after the agreed period, either party shall be entitled to terminate this agreement without further notice to the other party.

28.5 The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall have given notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this agreement by a period equal to the time that its performance is so prevented.

## **29. CESSION**

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

### **30. CHANGE OF CONTROL OR CIRCUMSTANCE**

- 30.1 The service provider shall notify the City in writing of any change in the service provider's shareholding or membership or any change in the service provider's subsidiary companies or holding or its affiliates (such change shall be considered a material change in the constitution and identity of the service provider). The City may terminate this agreement upon becoming aware of such material change.
- 30.2 The parties agree that should there be a change, as envisaged in Clause 30.1 above, the service provider will no longer exist and a new third party or entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the service provider's rights and obligations in terms of this agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.
- 30.3 The service provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the service provider to provide the goods and/or services. In the event that any material change or circumstance occurs and the service provider fails to inform the City of such a change or circumstance, the service provider shall be deemed to have breached a material term of this agreement and the City shall be entitled to cancel the agreement on 1 (one) month's prior notice.

### **31. BREACH**

- 31.1 Subject to Clause 30.3 above, should either party commit a breach of any term of this agreement ("the defaulting party") then the affected party ("aggrieved party") shall be entitled to inform the defaulting party in writing to remedy such failure or default within 5 (five) business days. Should the defaulting party fail to remedy the breach within 5 (five) business days after receipt of the notice, the aggrieved party shall be entitled, without prejudice to any of its rights under this agreement or law, to –
- 31.1.1 immediately terminate this agreement without giving written notice and claim damages (which shall include legal costs on an attorney or client scale);
- 31.1.2 request specific performance and claim damages (which shall include legal costs on an attorney or client scale); or
- 31.1.3 impose penalties as provided for in Clause 13 above.

### **32. EARLY TERMINATION**

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

### **33. DISPUTES**

33.1 Save for Clause 31 above or any other clause in this agreement which provides for its own remedy, should any dispute arise between the parties in respect of or pursuant to this agreement, including, without limiting the generality of the foregoing, any dispute relating to –

33.1.1 the interpretation of the agreement;

33.1.2 the performance of any of the terms of the agreement;

33.1.3 any of the parties' rights and obligations;

33.1.4 any procedure to be followed;

33.1.5 the termination or cancellation or breach of this agreement; or

33.1.6 the rectification or repudiation of this agreement,

any party may give the other party written notice of such dispute, in which event the provisions below shall apply.

33.2 Within 7 (seven) days of the declaration of such dispute, the parties' representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the parties may agree, either prior to or concurrently with arbitration) the provisions of Clause 33 shall apply.

33.3 If the parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either party may, on written notice to the other party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 1965 (Act 42 of 1965).

33.4 The arbitration shall be held under the provisions of the Arbitration Act, 1965 provided that the arbitration shall be –

33.4.1 at any place which the parties agree, in writing, to be mutually convenient; and

33.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

33.5 If the arbitration is –

33.5.1 a legal matter, then the arbitrator shall be a practising advocate or a practising attorney of no less than 10 (ten) years' standing;



- 33.5.2 an accounting matter, then the arbitrator shall be a practising chartered accountant of no less than 10 (ten) years' standing; and
- 33.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.
- 33.6 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the parties, by the president for the time being of the Law Society of the Northern Provinces.
- 33.7 Should the parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded, it shall be deemed to be a dispute of a legal nature.
- 33.8 The arbitrator may –
  - 33.8.1 investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with the dispute and, for that purpose, shall have the widest powers of investigating all documents and records of any party that have a bearing on the dispute;
  - 33.8.2 interview and question under oath the parties or any of their representatives;
  - 33.8.3 decide the dispute according to what he/she considers just and equitable in the circumstances; and
  - 33.8.4 make such award, including an award for specific performance, damages or otherwise, as he/she in his/her discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) days after it has been so requested.
- 33.9 The arbitrator's decision and award shall be in writing with reasons and shall be subject to appeal by either party.
- 33.10 Subject to the provisions of Clause 33.9 above, the arbitrator's award may, on application by either party to a court of competent jurisdiction and after due notice is given to the other party, be made an order of court.
- 33.11 Notwithstanding the provisions of Clauses 33.1, 33.2, 33.3, 33.4, 33.5, 33.6 and 33.7 above, in the event of either party having a claim against the other party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other party having such a claim shall be entitled to institute action therefor in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other party may dispute the claim.

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

#### **34. LAWS AND JURISDICTION**

- 34.1 This agreement shall be governed by and interpreted according to the law of the Republic of South Africa.
- 34.2 Each party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this agreement, including its termination. Each party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (in Pretoria)).

#### **35. NOTICES AND COMMUNICATION**

- 35.1 The Parties choose, as their respective *domicilium citandi et executandi* (hereinafter referred to as the "*domicilium*") and for the delivery of any notices arising out of the agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communication of whatsoever nature (including the exercise of any option), the address, as set out below.

35.1.1 The City:

2<sup>nd</sup> Floor, Block D  
Tshwane House  
320 Madiba Street  
Pretoria  
0001

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: 086 214 9544  
Email: \_\_\_\_\_

35.1.2 The service provider:

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

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

- 35.2 Each party shall be entitled, from time to time, by written notice to the other party, to vary its *domicilium* to any other address, which is not a post office box or *poste restante*.

- 35.3 Any notice given and any payment made by any party to another party (hereinafter referred to as “the addressee”) which –
- 35.3.1 is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
  - 35.3.2 is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7<sup>th</sup> (seventh) day after the date of posting; or
  - 35.3.3 is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 35.4 Any notice or communication required or permitted in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to give notice by facsimile.
- 35.5 Notwithstanding anything to the contrary in this agreement, a notice or communication actually received by one party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

## **36. GENERAL AND MISCELLANEOUS**

### **36.1 Sole record of agreement**

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

### **36.2 No amendment except in writing**

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

### **36.3 Waivers**

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

#### 36.4 **Survival of obligations**

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

#### 36.5 **Approvals and consents**

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

### 37. **EXECUTION**

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

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

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

Witnesses:

1. ....

2. ....

**For and on behalf of the City of  
Tshwane Metropolitan  
Municipality  
(duly represented by  
Ms Mmaseabata Mutlaneng)**

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

Witnesses:

1. ....
2. ....

For and on behalf of

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

**(duly represented by**

\_\_\_\_\_  
\_\_\_\_\_ )

## **ANNEXURE A**

### **RESOLUTION OF THE BOARD**

Resolution by the board of directors of \_\_\_\_\_  
(the "company") made at a meeting held at \_\_\_\_\_ on  
\_\_\_\_\_ 20\_\_.

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

#### **RESOLVED:**

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

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

\_\_\_\_\_  
**Read and confirmed**


**CHAIRPERSON/COMPANY SECRETARY**

**ANNEXURE B**

**SCOPE OF WORK AND DELIVERABLES**

**ANNEXURE C**  
**PAYMENT TERMS**




	OCCUPATIONAL HEALTH AND SAFETY SPECIFICATION	
	PROJECT LOCATION	TEMBA AND ROODEPLAAT WATER TREATMENT WORKS
	PROJECT DESCRIPTION	INSTALLATION OF LIQUID OXYGEN AND NITROGEN TANKS
	PAGES	Page 1 of 70

## General Notification

This document forms an integral part of the tender document and, in particular, shall constitute the Client's (City of Tshwane.) Occupational Health & Safety Specification, as required by the Construction Regulations, 2014, as promulgated under the Occupational Health and Safety Act (Act no. 85 of 1993).


This 'Health and Safety Specifications' document is governed by the "Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), hereinafter referred to as 'The Act', in line with the Construction Regulations 2014. Notwithstanding this, cognizance should be taken of the fact that no single Act or its set of Regulations can be read in isolation. Furthermore, although the definition of Health and Safety Specifications stipulates 'a documented specification of all health and safety requirements pertaining to associated works on a construction site, so as to ensure the health and safety of persons', it is required that the entire scope of the OHS legislation, including the Basic Conditions of Employment Act be considered as part of the legal compliance system. With reference to this specification document this requirement is limited to all health and safety issues pertaining to the site of the project as referred to here-in. Despite the foregoing it is reiterated that environmental management must receive due attention.

Due to the wide scope and definition of construction work, every construction activity and site will be different, and circumstances and conditions may change even on a daily basis. Therefore, due caution is to be taken by the Principal Contractor when drafting the Health and Safety Plan based on these Health and Safety Specifications. Prior to drafting the Health and Safety Plan, and in consideration of the information contained here-in, the contractor shall set up a Risk Assessment Program to identify and determine the scope and details of any risk associated with any hazard at the construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard. This Risk Assessment and the steps identified will be the basis or point of departure for the Health and Safety Plan.


	OCCUPATIONAL HEALTH AND SAFETY SPECIFICATION	
	PROJECT LOCATION	TEMBA AND ROODEPLAAT WATER TREATMENT WORKS
	PROJECT DESCRIPTION	INSTALLATION OF LIQUID OXYGEN AND NITROGEN TANKS
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The Health and Safety Plan shall include documented ‘Methods of Statement’ (see definitions under Construction Regulations) detailing the key activities to be performed in order to reduce as far as practicable, the hazards identified in the Risk Assessment.

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## 1. Definition of Terms

- I. Act – unless stated otherwise in the document, shall mean the Occupational Health and Safety Act of 1993 (Act 85 of 1993)
- II. Client-Means any person for whom construction work is performed and or undertaken (City of Tshwane for the purposes of this project)
- III. Construction site means a workplace where a construction work is being performed
- IV. Construction supervisor means a competent person responsible for supervising construction activities on a construction site.
- V. Competent person means a person who –
  - a) Has in respect of the work or task to be performed the required knowledge, training and experience and where applicable, qualifications, specific to that work or task: Provided that where appropriate qualifications and training are registered in terms of the provision of the National Qualification Framework Act 2000 (Act 67 of 2000), those qualifications and that training must be regarded as the required qualification and training and
  - b) Is familiar with the Act.
- VI. Principal Contractor-Means an employer, as defined by Section 1 of the OHSACT who performs construction work and is appointed by the client to be in overall control and management of the construction site and works
- VII. Agent-Means a competent person who acts as a representative for a client



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- VIII. Occupational Health and Safety Specification- Means a documented specification of all Health and Safety requirements pertaining to the associated works on a construction site so as to ensure the health and safety of persons working ,visiting, passing, staying and working close to the construction site and or other applicable areas such as the site camp
- IX. Risk-means the probability that injury or damage may occur
- X. Hazard-means a source of or exposure to danger

## 2. Introduction

In terms of the Construction Regulation 5 (1) of the OHS ACT, the client must based on the baseline risk assessment, compile an Occupational Health and Safety Specification for an intended project. This specification has an objective to ensure that the principal contractor entering into a contract with the client achieves and maintain an acceptable level of Occupational Health and Safety performance and compliance.

This document forms an integral part of the contract between the client and the principal contractor.

The Principal Contractor and its Contractors shall furthermore implement any reasonable practicable means to ensure compliance to this Occupational Health and Safety Specification and any other applicable legislation on their organization and/or activities performed by or for them

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Compliance with this document does not absolve the principal contractor from complying with any other minimum legal requirement and the principal contractor remains responsible for the health and safety of his employees, those of his mandatories as well as any person coming on site or on adjacent properties as far as it relates to the construction activities

### **3. The Client`s commitment to Occupational Health and Safety Management**


City of Tshwane as the client shall ensure that it`s duties as outlined in CR 2014, 5(1) are carried out. The duties of the client amongst others includes:

- Prepare a baseline risk assessment for an intended construction work or project;
- Prepare a suitable, sufficiently documented and coherent site specific health and safety specification for the intended construction work based on the baseline risk assessment;
- Ensure that the principal contractor to be appointed has the necessary competencies and resources to carry out the construction work safely;
- Appoint every principal contractor in writing for the project or part thereof on the construction site;
- Ensure that periodic audits and documents verification are conducted at intervals mutually agreed upon between the principal contractor, but at least once every thirty days;

**Duties of the Principal Contractor are listed in CR 2014, 7 (1) others shall include:**

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- Ensuring that decisions and practices affecting occupational health and safety performance are consistent with the issued specification;
- Ensuring adequate resources are made available for the effective implementation of occupational health and safety control and mitigation measures;
- Participating in hazard identification and risk assessments and design safety reviews;
- Communicating occupational health and safety management processes, strategies and control measures with all levels of employees, contractor and/or visitors;
- Ensuring visible leadership at all sites;
- Promoting and enforcing the use of correct types of Personal Protective Equipment (PPE);
- Reporting and investigation of incidents and accidents and ensuring actions are identified and implemented to prevent similar types of incidents reoccurring;
- Participating in Client audits and meetings and ensuring required actions are implemented within reasonable time frames on the site/project;
- Recognizing and commending safe work practices and coaching employees who require guidance;
- Applying and enforcing consequence management from deviations and transgressions of/from compliance to this OHS Specification noted and/or observed, where applicable;
- Carrying out safety observations, implement corrective and preventative actions and giving immediate feedback;
- Encouraging employee participation in the formulation of work instructions and safety rules.

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#### **4. Scope**


This project specific Occupational Health and Safety Specification will cover and address reasonable and foreseeable, risks, exposures and aspects of Occupational Health and Safety as affected by the activities repair and maintenance of belt presses and linear belt gravity sludge thickener

The specification will provide the requirements that the principal contractor and other contractors will have to comply with in order to reduce the risk associated with the above mentioned contract work and that may lead to incidents causing injury and/or ill health to a level as low as reasonable practicable and possible.

#### **5. Omissions from OHS Specification**

Where any omission from the OHS Specification is identified, applicable legal requirements will constitute the minimum standard for compliance to the relevant omission. The responsibility will be on the Principal Contractor to provide assurance to the client (City of Tshwane) on compliance to the applicable legal requirements related to the activity / task / process.

#### **6. Change or Review of Specifications**

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Whenever the client (City of Tshwane) identifies the need to change or review the OHS Specification, approved changes and revisions will be communicated to the Principal Contractor. A cost analysis on the implementation of the proposed changes / revisions will be calculated through a collaborative processes between the Client and the Principal Contractor – where the approved changes and/or revisions has no cost implication for the Principal Contractor the Principal Contractor will be required to accept the approved changes / revisions and ensure implementation within the OHS Plan .


## **7. Safety Files**

### **7.1. Preparation and Submission of safety file**


The Principal Contractor shall prepare a safety file containing the processes / procedures and templates to be applied during the project period for the scope of work. The Principal Contractor will be evaluated during the contract period against the submitted safety file.

At a minimum the safety file shall contain the following documentation and in accordance with the specification:


1. Notification of construction work to the relevant Department of Labour (stamped on each page / no faxed copies);
2. Scope of work to be performed;
3. Public Liability
4. Personnel list (Principal Contractor employees);
5. OH&S Policy and other procedures;
6. Updated copy of the Occupational Health and Safety Act (Act no. 85 of 1993) and its Regulations.
7. Updated copy of the Compensation for Occupational Injuries and Diseases Act (Act no. 130 of 1993) and its Regulations;

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8. Proof of valid registration and good standing with the Compensation Commissioner or another licensed Insurer;
9. OHS Plan approved by the Client.
10. Agreement with Mandatory in terms of Section 37(1) &2 of the OHS Act.
11. Approved risk assessments, review and monitoring plans and safe work procedures (method statements);
12. A list of contractors (sub-contractors) including copies of the agreements between the parties and the type of work being done by each contractor;
13. Designs and/or drawings;
14. All written designations and appointments for project scope of work (CV and competency copies);
15. Management structure (inclusive of OH&S responsibility & meeting structure);
16. Induction training and site OHS rules;
17. Occupational health and safety training matrix / plan;
18. Arrangements with contractors and/or mandatories;
19. The following registers (as applicable to contract scope of work):
  - Accident and/or incident notifications, investigation & control register;
  - Occupational health and safety representatives inspection register;
  - Construction vehicles and mobile plan inspections;
  - Daily inspections templates of vehicles, plant and other equipment by the operator, driver and/or user;
  - Daily inspections templates of excavations by competent person;

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- Template for entry into confined space;
- Toolbox talks pro-forma;
- Designer's inspections and structures record template;
- Inspection and maintenance template of explosive powered tools;
- Inspection template of electrical installations (including inspection of portable electrical tools, electrical equipment and other electrical appliances);
- Fall protection inspections template;
- First-aid box content template;
- Record of first-aid treatment template;
- Fire equipment inspection and maintenance template;
- Record of hazardous chemical substances template kept and used on site;
- Ladder inspection template;
- Machine safety inspections template (including machine guards, lock-outs etcetera);
- Inspection templates for lifting machines and –tackle (including daily inspections by drivers/operators);
- Inspection templates of scaffolding;
- Inspection templates of stacking and storage;
- Inspections templates of structures;
- Inspections templates of vessels under pressure;
- Inspection templates of welding equipment; and

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- Templates of issuing of Personal Protective Equipment;
- Monthly reporting and recording of statistics templates;
- Keeping of any other record in terms of applicable legislation falling within the scope of OHS Legislation applicable to the project and the Principal Contractor / Contractor's activities and organization.
- Emergency preparedness and response programmes;


## 7.2. Evaluation and approval of Safety plan

The client (City of Tshwane) will conduct an initial inspection and evaluation of the Principal Contractor's OHS file and plan for approval purposes before commence work. The Principal Contractor is required to submit the safety file which at least must contain the following:

- Safety plan;
- Risk assessment(HIRA), risk review and training plans;
- Legal or appointments of responsible persons and proof of competence;
- Fall protection plan;
- Method statements

The Client will evaluate the file and give feedback to the Project manager and the Principal contractor. It is important to note that a safety plan cannot be approved in isolation, if the plan has not been approved, the Principal contractor shall ensure that the outstanding documents are submitted for re-evaluation within 3 working days.



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NOTE: The construction work cannot commence until the safety plan is approved. The proof of approval from the Client must be kept in the OHS file.

### **7.3.Principal Contractor engagement phase**

The Principal Contractor shall commence with the construction work after approval of the safety plan. The following processes will be applied to the Principal Contractors on a monthly basis for the duration of the contractual period:

- Monthly Compliance Assessments;
- Site Inspections;
- Progress meetings;
- OHS meetings


An initial site establishment inspection will be conducted by the Client after approval of the safety file / plan.

### **7.4.Project close-out and submission of consolidated Health & Safety File.**


On completion of a construction work/ project the Principal Contractor shall submit all documentation required for the consolidated safety file to City of Tshwane as part of the project hand over documentation.

At a minimum, the safety file will contain the following records:

1. Approval letter by City of Tshwane on contents of Health and Safety file including plan;

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2. A construction work permit issued by the Department of Labour as contemplated in Construction Regulation 3 of the Construction Regulations 2014 (when applicable).
3. Scope of work performed;
4. OHS Policy and other procedures;
5. Proof of registration and good standing with the Compensation Commissioner or another licensed Insurer;
6. OHS plan approved by the Client including the underpinning risk assessment(s) and method statements;
7. A list of contractors (sub-contractors) including copies of the agreements between the parties and the type of work done by each contractor;
8. Notifications of new projects /extension of scope received;
9. Designs and/or drawings; (where required)
10. Occupational health and safety committee meeting agenda and minutes;
11. Copies of written designations and appointments (CV and competency copies);
12. Management structure (inclusive of OHS responsibility & meeting structure);
13. Induction training conducted and site OHS rules;
14. Occupational health and safety training provided;
15. Arrangements with contractors and/or mandatories;
16. Description of security measures;
17. All applicable registers:

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## 8. OHS Specification Requirements

### 8.1.General Requirements of Health and Safety Plan


Construction Regulation 7 (1) stipulates that the principal contractor must provide and demonstrate to the client a suitable sufficiently documented and coherent site specific health and Safety Plan, based on the client's documented Health and Safety Specification contemplated in Regulation 5(1) (b), which plan must be applied from the date of commencement of and for the duration of the construction and which must be reviewed and updated by the principal contractor as work progresses.

It is expected from the Contractor to include in his safety plan method statements on how to accomplish the requirements relating to the Construction Regulations, 2014 and related incorporated standards and regulations.

Principal Contractors should describe how their safety management systems will work and what control procedures they plan on using to ensure safety on the construction site

The following generic aspects should be covered in the Safety plan:

- What administrative procedures the Principal Contractor envisages to use in the implementation and maintenance of the safety plan with reference to the construction site
- How continuous assessment of the safety plan will be assessed and implemented with respect to construction site
- What control systems the Principal Contractor envisages to implement on site to support his safety program


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- How the Principal Contractor will ensure that he adheres to the construction regulations in respect of competent persons for appointments
- What external resources the Principal Contractor envisages on using to ensure successful implementation and sustainability of the safety plan
- What training to employees the Principal Contractor envisages and how he would go about to execute it
- The Principal Contractor should indicate which competent persons he plans on employing based on the scope of work.

## 8.2. Outline of Health and Safety Plan

The Principal Contractor's Health and Safety Plan prepared in accordance with this specification shall consist of at least the following sections and sub-sections:

1. Purpose
2. Scope of Plan,
3. Definitions
4. Risk Assessment,
  - a. Alternative Forms of Risk Assessment,
  - b. Methodology of Risk Assessment,
  - c. Elements of Risk Assessment,

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- i. Scope of assessment,
- ii. Risks Identified,
- iii. Risk Analysis,
- iv. Risk Evaluation,
- v. Risk Treatment(safe working procedures)
- vi. Monitoring and reviewing,


5. Resources,

- a. Health and Safety Staffing Organogram,
- b. Employees,
- c. Subcontractors inclusive of their scope of work and their core resources,
- d. Training,
- e. Plant,
- f. Facilities;
- g. Vehicles,
- h. Equipment

6. Materials,

- a. Temporary Materials
- b. Permanent Materials

7. Categories of Work

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8. Implementation of Health and Safety Plan,
  - a. Administrative systems,
  - b. Training,
  - c. Reporting,
  - d. Monitoring,
  - e. Inspections,
9. Auditing,
  - a. Internal audits,
  - b. Audits by client or Safety agent,
10. Emergency procedures and response

### **8.3. Risk Assessment**

#### **8.3.1 General**

This section of the specification provides guidelines for the Contractor in preparation of risk assessments in order to ensure compliance with Regulation 9 of the Construction Regulations, 2014. According to SANS 31000:2009, Risk is the overall process of risk identification, risk analysis, and risk evaluation. This section highlights the principles related to the preparation of suitable and sufficient risk assessments. Contractor Staff intending to prepare risk assessments should be trained and suitably experienced in the application envisaged.

A suitable and sufficient risk assessment is an assessment which:

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- Accounts for risks that are likely to arise during the construction of the Works,
- Enables the development and implementation of systems to manage the risks,
- Remains valid for a reasonable period of time,
- Provides a basis for training of employees, and
- Improves working procedures and introduce long term controls.

The requirements of the Construction Regulations will not be satisfied by a single risk assessment exercise that holds good for all time.

The risk assessment process on the Works is an ongoing process.


The objectives of risk assessments are to:

- Identify the risks that are mostly in need of reduction,
- Identify the various options for achieving such reduction,
- Identify the risks that require careful ongoing management, and
- Identify the nature of the required ongoing attention.

### **8.3.2 Forms of Risk Assessment**

In order to ensure compliance with the Construction Regulations, the Contractor will be required to carry out the following three forms of risk assessment:

#### **8.3.2.1 Activity based risk assessment**

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The Contractor will be required to carry out activity based risk assessment before the commencement of construction activities on the Works. This risk assessment will form part of the Contractor's Health and Safety Plan. The risks and hazards to which persons, plant, vehicles and facilities may be exposed during the construction of the Works should be identified and evaluated. Measures to reduce or control these risks or hazards should be defined during this assessment. The effectiveness of the measures defined and the baseline risk assessment prepared shall be monitored and reviewed from time to time to ensure that it remains relevant and accurate.


#### **8.3.2.2 Issue based risk assessments**

The Contractor will be required to carry out separate risk assessments during construction of the Works when methods and procedures are varied, for example when:

- Designs are amended,
- New machines are introduced,
- Plant is periodically cleaned and maintained,
- Plant is started-up or shut-down,
- Systems of work change or operations alter,
- Incidents or near-misses occur, or
- Technological developments invalidate prior risk assessments

#### **8.3.2.3 Continuous risk assessments**



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The Occupational Health and Safety Act specifically requires that employers shall provide and maintain working environments that are safe and without risk to health. The general awareness of hazards needs to be raised as work ethic to maintain a safe and risk free environment on an ongoing basis. This is achieved by continuous risk assessments, the most important form of risk assessment that takes place as an integral part of day-to-day management. Examples of continuous risk assessments include:

- Regular audits,
- Maintaining general hazard awareness,
- Pre-work risk assessment

#### **8.3.4 Methodology for the Preparation of Risk Assessments**

The Contractor shall in the preparation of risk assessments, follow the following general principles:

- Appoint in writing a suitably competent risk assessor
- The appointed risk assessor shall lead the risk assessment process
- Provide the team with background data, scope of work, potential hazards and underlying causes, and
- Where necessary employ experts for complex risk assessments and aspects of risk assessments that require experiential judgment,
- Institute an ongoing system of identifying aspects of the work that require risk assessment.


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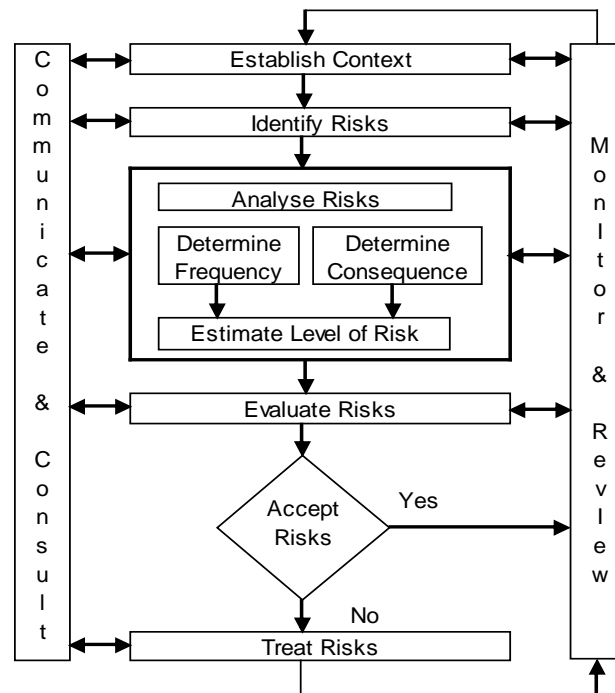
### 8.3.5. Elements of a Risk Assessment

The process of carrying out a risk assessment consists of a number of well-defined steps. These steps improve decision-making by providing a greater understanding of the risks and their impacts. The main steps or elements of the risk assessment process are as follows:

- 1) Consider scope and nature of risks involved, determine purpose and physical and legal bounds of assessment and define risk evaluating criteria,
- 2) Systematically identify risks,
- 3) Analyze risks with regard to causes, likelihood of occurrence and possible consequences against the background of existing controls and its effectiveness,
- 4) Evaluate risks in terms of pre-established criteria to determine need and priority for attention,
- 5) Treat risks through a process of risk elimination, substitution, controlling risk at source, risk mitigation such as training and as far as risk remains, provide personal protective equipment (PPE),
- 6) Monitor and review progress and performance in terms of management system, and
- 7) Communicate and consult.

The above steps are as depicted in Figure 1, below.


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**Figure 1: Risk Management Process**

The Contractor shall ensure that the risk assessment compiled as part of his Health and Safety Plan contains at least these items.

Refer to Baseline Risk Assessment Annexure 2 of this specification..

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#### 8.3.5.1 Risk Identification


The Contractor should regard this step of the risk assessment as the most important. Subsequent analysis and evaluation of risks and the development of risk control measures are wasted if the risks or hazards on the Works are not carefully identified.

The Contractor should bear the following principles in mind when identifying the risks:

- i) Systematically address all risks or hazards on the Works,
- ii) Review all aspects of the work, but consider only those that have a potential to cause harm,
- iii) Rank the risks identified in order of importance and then use appropriately advanced techniques to deal with major risks,
- iv) Deal mainly with major risks and don't obscure these with unimportant information, especially minor risks,
- v) Address what actually happens in the workplace during the work activity
- vi) Consider all persons that may be affected,
- vii) Highlight those groups and individuals who may particularly be at risk, and
- viii) Review the adequacy and effectiveness of existing safety controls and measures

#### 3.5.2 Risk Analysis

In this step, the Contractor will be required to analyze the risks identified by determining each risks frequency and magnitude or severity of the consequence of the risk or hazard.


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The frequency of occurrence of a hazard may be expressed as the number of times that it may occur in year, decade, lifetime, century, or longer period, according to comparative human experience. The magnitude of the likely consequence of a hazard may be expressed in terms of the degree of incapacitation, number of people or costs involved. The frequency of occurrence of a hazard and the magnitude of its consequence may be compounded as the risk that it poses as shown in the “risk matrix” in Figure 2 below.

Frequency of Occurrence of Hazard	Severity of Consequences of Potential Hazard					
	1 Medically treatable injury	1 Compensable injury	10 Compensable injuries	1 Permanently disabling injury	1 Fatality	10 Fatalities
Frequent; 1 or more occurrences per year	Medium	High	Very high	Severe	Severe	Severe
Several times during a career; 0.1 occurrences per year	Medium-low	Medium	High	Very high	Severe	Severe
Unlikely, but possible during a career; 0.01 occurrences per year	Low	Medium-low	Medium	High	Very high	Severe
Very unlikely during a career; 0.001 occurrences per year	Low	Low	Medium-low	Medium	High	Very high
Barely credible; 0.0001 occurrences per year	Low	Low	Low	Medium-low	Medium	High

**Figure 2: Compounded Risk Matrix**

The columns in the table represent the likely consequence of the hazard and the rows, the frequency of occurrence. The scales for both quantities represent consistent progressions, able they qualitative. The risks evidently range from low to severe. Note that diagonals in the matrix represent the risks of the identified hazards, taking the effectiveness of controls into consideration.

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The table represents a typical risk matrix that need not necessarily be adopted by the Contractor. The Contractor may use an alternative risk matrix provided that it is approved as part of his Health and Safety Plan.

### 8.3.5.3 Risk Evaluation

In this step the Contractor will be required to compare the risks found during the analysis process with similar risks previously experienced for the purpose of deciding how to treat the risk. A useful systematic approach for this purpose is as follows:

- If the assessed risk exceeds similar risks that have occurred in the past and that are considered to be unacceptable, the assessed risk would require treatment depending upon its magnitude as discussed in Section 4.4.5, or
- If the assessed risk exceeds similar historical risks that are acceptable, treatment of the assessed risk will depend on the extent by which it exceeds the historical risks, or
- If the assessed risk is less than historical risks that are unacceptable, treatment of the assessed risk will depend on the extent by which it is less than the historical risks, or
- If the assessed risk is less than historical risks that are acceptable, the assessed risk would also be acceptable and would not require any treatment.

### 8.3.5.4. Risk Treatment


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The contractor must select one or more options of modifying risks, and implementing those options. The option(s) selected must be covered in the safety plan and be followed as prescribed. Reference can be made to SANS31000:2009 for different risk treatment options. SANS 31000:2009, clause 5.5.3 may be consulted in preparing and implementing risk treatment plans.

### **8.3.6. Reporting and Recording of Risks**

The Principal Contractor shall ensure that the risk assessment process is recorded and included in the Health and Safety Plan. The risk assessment document should be easily accessible to the Contractor's employees, their representatives, to inspectors, the Employer or his Safety Agent. The essential contents of the document should be as follows:

- Objectives and expected outcomes,
- Description of the Works under assessment,
- Summary of context of study
- Composition of risk assessment team, (including qualifications and relevant experience),
- Approach used to systematically identify risks,
- Identified risks (ranked in order of priority),
- Method adopted for assessing frequencies and consequences of risks,
- Consequences (ranked in order of magnitude),
- Identification of individuals and groups who may be affected by major hazards and risk and who may especially be at risk,

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- Basis for defining safety standards to be achieved,
- Contractor's resources devoted to risk assessment,
- Actions proposed to reduce unacceptably high risks,
- Review effectiveness of existing safety measures to control risks, and
- Implementation of program of selected treatments (including controls to manage unacceptably high risks).

#### **8.3.7. Monitoring and Review**

The contractor must indicate in the safety plan the monitoring and review plan to be used during the construction work.


#### **8.3.8. Communication and Consultation**

The Principal Contractor will be required to communicate and consult with internal and external stakeholders during each step of the risk assessment process. Stakeholders will include the Client or Safety Agent, the Engineer and the Contractor's employees and consultants.

### **8.4 Resources**

#### **8.4.1 General**



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In this section of his Health and Safety Plan, the Contractor will be required to state how he intends to comply with the requirements of the Occupational Health and Safety Act, 85 of 1993 and all its Regulations and related incorporated standards with regards to the resources and facilities intended for use on the project (construction work)


### **3.3.5.2 Employees**

The Principal Contractor shall provide in his Health and Safety Plan his intended Staffing Organogram for the construction work. The organogram should include all applicable legal appointments and supervisors as contemplated in the Construction Regulations 2014.

Copies of the supervisory staffs' curriculum vitae or portfolio of evidence, proof of competence and their appointment letters should be appended to the Contractor's Health and Safety Plan.

The Principal Contractor's Health and Safety Plan should in addition cover at least the following aspects:

- The number of unskilled, semi-skilled and skilled (including Foreman, Charge hands, Artisans, Operators, Drivers, Clerks, Store man and Team Leaders) employees he intends employing on the Works,
- The health and safety training to be provided to the Contractor's employees,
- The program of the health and safety training,
- Systems for the review of the effectiveness of the training provided, and
- Systems to determine further training requirements throughout the construction period.

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Pro-forma letters of appointment for the various inspectors, supervisors and issuers as contemplated in the Construction Regulations, 2014 are included in Annexure 1 to this specification for use by the Contractor. The Contractor shall ensure that he includes in his Health and Safety Plan the appointment letters for all his inspectors, supervisors and issuers appointed for the Works.

The Contractor may make other additional legal appointments that are applicable to the project.

#### **8.4.3. Competencies**

The Principal Contractor shall appoint competent person to perform duties that require competency.


#### **8.4.4. Physical and Psychological Fitness**

The Principal contractor shall ensure that all employees are in possession of a valid medical certificate of fitness to work in such an environment and issued by an occupational health practitioner in the form of Annexure 3 of the Construction regulations.

#### **8.4.5 Subcontractors**

The Contractor shall with reference to the use of subcontractors on the Works and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- The steps intended to ensure that his Subcontractors prepare, implement and maintain Health and Safety Plans,
- How health and safety information will be made available to his Subcontractors when changes are brought about to the design,


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- How he intends determining that his Subcontractors are registered and in good standing with the compensation fund or with a licensed compensation insurer prior to the commencement of the Works,
- How he intends determining if his Subcontractors have made provision in their tenders for the cost of health and safety measures during the construction of the Works,
- How he intends satisfying himself on the competencies and resources of Subcontractors he intends appointing, and
- How he intends ensuring that his Subcontractors perform risk assessments prior to commencing their respective portions of the Works.

### **8.5 Fall Protection Equipment**

The Contractor shall with reference to Section 10: Fall Protection Equipment of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- Compilation of a fall protection plan,
- How the fall protection plan will be implemented and maintained,
- How employees will be screened and declared medically fit to work in areas where fall protection equipment is needed,
- How the safeguarding of persons, plant, vehicles, equipment and facilities on the construction site is contemplated,
- Training of staff working at heights and in the use of fall protection equipment,
- How a continuous assessment of the situation will be executed,

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- How fall protection equipment will be inspected for safety, and
- How corrective actions will be implemented
- Emergency plans and procedures for treatment of incidents relating to falls from height.

### 8.6. Structures


The Principal Contractor is required to adhere to Section 11: Structures of the Construction Regulations 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How the uncontrolled fall of structures will be prevented
- How will maintenance of the structure be carried out

### 8.7. Temporary works

The Principal Contractor is required to adhere to Section 12: Temporary works of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How the design of Temporary works will be carried out,
- How will the Principal Contractor ensure competent supervision of Temporary works
- How the erection of Temporary work structures will be managed,
- How the continuous assessment of the safety of Temporary work structures will be done,
- How the loading/moving of Temporary work structures will be managed or limited,

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- How he intends to provide safe access for all work to be carried out above the foundation bearing level, and
- How he intends keeping records of the above.

### 8.8 Excavation work

Principal Contractor is required to adhere to Section 13: Excavation work, of the Construction Regulations, 2014.

The Principal Contractor must discuss the following in detail in his safety plan:


- How will the Principal contractor ensure competent supervision of excavation work
- How will the Principal Contractor establish the stability of ground prior to excavations,
- What steps will the Principal Contractor follow to ensure that bolstering, shoring and bracing is sufficient to ensure the safety of the excavation, and
- What steps will the Contractor follow to ensure the equipment used to safeguard an excavation is sufficient and safe?

### 8.9. Demolition work

Principal Contractors is required to adhere to Section 14: Demolition work, of the Construction Regulations, 2014.

The Principal Contractor shall discuss the following in detail in his safety plan:

- Briefly explain how he will safeguard people and property during and after demolition works


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- Briefly explain how he will protect staff from dangerous situations
- Discuss the methods proposed to safeguard the public and property against harm during demolition works
- Discuss what type of equipment he envisage to use during demolition work
- How will the Contractor ensure the safety of equipment used during demolition work
- What steps will the Contractor deem necessary to take where hazardous materials is encountered
- How he will comply with the explosives legislation where the demolishing work involves the use of explosives
- Dust control measures
- Noise control measures

#### **8.10. Scaffolding ( should it be required)**

The Principal Contractor shall with reference to Section 16: Scaffolding of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- Appoint competent person in writing for scaffolding operations supervision,
- How compliance with SABS 085 will be ensured,
- How scaffolding in use will be maintained,
- What systems are intended to ensure the safety of scaffolding used,
- What tests will be performed to establish the safety of scaffolding used, and

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- Training plan for scaffold erectors and inspectors.

### 8.11. Suspended platform


The Principal Contractor shall with reference to Section 17: Suspended platforms of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- Appoint in writing a competent person who will supervise all suspended platform works operations.
- What systems he intends using to ensure the safety of all suspended platforms,
- What tests will be performed to establish the safety of suspended platforms,
- How he intends maintaining suspended platforms being used, and
- How he will document the design, testing, maintenance and inspections of the suspended platforms.

### 8.12. Material hoists

The Principal Contractor shall with reference to Section 19: Materials Hoist, of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends confirming the construction stability of the material hoists,
- Appoint in writing a competent person to inspect material hoist

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- What systems he intends using to ensure the safety of all material hoists,
- How inspections will be carried out daily
- What tests will be performed to establish the safety of all material hoists,
- How he intends maintaining the material hoists being used, and
- How he will document the design, testing, maintenance and inspections of all material hoists and
- Ensure competence of operators of hoist material
- What safety procedures and precautions are envisaged to ensure safe operation of the materials hoists?

### 8.13. Bulk Mixing Plant

The Principal Contractor shall with reference to Section 20: Bulk mixing plants of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- What systems he intends using to ensure the safety of all bulk mixing plants,
- Appointment in writing of a competent person to supervise the operation of the bulk mixing plant
- How he intends maintaining the bulk mixing plants in use, and
- How he will document the design, testing, maintenance and inspections of bulk mixing plants in use.



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#### **8.14. Explosive actuated fastening Device**

The Principal Contractor shall with reference to Section 21: Explosive actuated fastening device, of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:


- Appointing a competent person for operation, maintenance and use of explosive actuated fastening devices,
- How he intends controlling the issuing of explosive actuated fastening device,
- How he intends implementing safety procedures prior to use of explosive actuated fastening devices, and
- What safety measures will be required during the use of explosive actuated fastening devices?

#### **8.15. Cranes**

This section of the specification shall be read in conjunction with the provisions of the Driven Machinery Regulations, 1988.

The Principal Contractor shall with reference to Section 22: Cranes, of the Construction Regulations 2014 and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How will environmental factors be taken into account in respect to the use of cranes,
- What systems he intends using to ensure the safety of all cranes in use,
- How he intends maintaining cranes in use,


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- What tests will be performed to establish the safety of all cranes in use,
- What safety procedures and precautions are envisaged to ensure the safe operation of all cranes in use,
- How he will proof the medical fitness of the tower crane operators,
- How he will document the design, testing, maintenance and inspections of all cranes in use, and
- The Principal contractor shall proof compliance of the Driven Machinery Regulation, 1988, with reference to the lifting machinery and tackle being used.

#### **8.16. Construction vehicles and mobile plant**

The Principal Contractor shall with reference to Section 23: Construction vehicles and mobile plant of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends ensuring that construction vehicles and mobile plant are:
  - Of acceptable design and construction,
  - Maintained and in good working order,
  - Used according to design specifications, and
  - Are protected from falling into excavations, water or areas lower than the working surfaces,
- How he intends ensuring that workers are competent, authorised and physically fit to operate construction vehicles and mobile plant,

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- What traffic arrangements and safety precautions will be implemented to ensure safe operation of construction vehicles and mobile plant on the Works,
- How he intends to comply with the National Road Traffic Act 1996, and
- How he intends safeguarding employees against construction vehicles and mobile plant moving on the construction site.


#### **8.17. Electrical Installation and Machinery on construction sites**

This section of the specification shall be read in conjunction with the provisions contained in the Electrical Installation Regulations, 1992.

The Principal Contractor shall with reference to Section 24: Electrical Installation and machinery on construction sites of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- Appointment of competence person for all temporary control and inspection of all temporary electrical installations,
- How he intends safeguarding employees against electrical cables or apparatus under, over or on site, and
- How he will ensure that electrical installations are of adequate strength to withstand working conditions on a construction site.

#### **8.18. Use and temporary storage of flammable liquids on construction sites**

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This section of the specification shall be read in conjunction with the provisions for the use and storage of flammable goods as determined in the General Safety Regulations.

The Principal Contractor shall with reference to Section 25: Use and temporary storage of flammable liquids on construction sites of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How flammable liquids will be stored to minimize the risk of fire or explosions,
- How the contractor will identify a flammable store
- What safety precautions will be employed if ventilation of the flammable store is not possible,
- How access to flammable stores will be controlled,
- How empty vessels used for the storage of flammable liquids will be disposed of,
- What quantity of flammable liquids will be stored on the construction site,
- What systems are intended to ensure the safe storage of flammable liquids, and
- What retaining methods will be used to prevent the spreading of any spillage?

### **8.19. Water Environments**

The Principal Contractor will be required to adhere to Construction Regulation 26: Water Environments, of the Construction Regulations, 2014.

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The Principal Contractor must discuss the following in detail in his safety plan:

- What precautions will the Contractor take to identify dangers where employees may fall into water
- What safety procedures and equipment will the Contractor implement to safeguard employees working at water environments


#### **8.20. Housekeeping and general safeguarding on construction sites**

Principal Contractors will be required to adhere to Section 27: Housekeeping and general safeguarding on construction sites, of the Construction Regulations, 2014.

This regulation must be read in conjunction with the provisions of the Environmental Regulations for Workplaces, 1987 (as amended).

The Principal Contractor must discuss the following in detail in his safety plan:

- How will contractors ensure the neatness of construction sites
- What measures does the Contractor envisage to
  - Store and/or stack materials,
  - Remove debris from site,
  - Prevent unauthorized entrance to the site
  - Protect employees or passers-by from falling objects

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### **8.21. Stacking and storage on construction site**

This section of the specification shall be read in conjunction with the provisions for the stacking of articles contained in the General Safety Regulations.


The Contractor shall with reference to Section 28: Stacking and storage on construction sites of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- Who will supervise the stacking and storage of materials on site,
- What systems are intended to ensure the safe stacking and storage of materials on the site ,and
- How he will keep the storage areas neat and under control

### **8.22. Fire precaution on construction sites**

Principal Contractors will be required to adhere to Section 29: Fire precautions on construction sites, of the Construction Regulations, 2014.

This regulation must be read in conjunction with the provisions of the Environmental Regulations for Workplaces, 1987 (as amended).

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The Principal Contractor must discuss the following in detail in his safety plan:

- How the Principal Contractor will minimize the risk of fire on the site
- How the Principal Contractor will identify potential fire hazards
- What prohibitions the Contractor will implement to manage risk areas
- How many employees the Principal Contractor will train in firefighting as per risk assessment
- What organization the Principal Contractor envisage to combat fires on sites
- What precautions and procedures will be followed to evacuate employees in the case of a fire

### **8.23. Construction employees' facilities**

Principal Contractors is required to adhere to Section 30: Construction welfare facilities of the Construction Regulations, 2014.


This regulation must be read in conjunction with the provisions of the Facilities Regulations, 1990 (as amended) and SANS 10400.

The Principal Contractor must discuss the following in detail in his safety plan:

- How will the Principal Contractor establish the amount of facilities required for employees to shower, change, eat and attend to sanitary needs

What measures will the employer take to house employees on site who lives far from their residences or for the provision of transport?

### **8.24. Operational Control of the Construction Site**

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In this section of his Health and Safety Plan, the Contractor will be required to state how he intends to comply with the requirements of the Occupational Health and Safety Act, 1993 and all its regulations and related incorporated standards with regards to the execution of all categories of work.

#### **8.24.1. Personnel Safety Equipment and Facilities**

The Contractor shall comply with Section 2 of the General Safety Regulations, and shall in particular provide all necessary personnel protective equipment for his personnel for the duration of the construction period. To this end the Contractor shall without limiting his obligations indicate in his Health and Safety Plan:

- Identify training requirements in the use and maintenance of personal protective equipment,
- The type of personnel safety equipment he will provide,
- How he intends issuing it to his employees, and


How he will maintain the personnel safety equipment issued.

#### **8.24.2. Display of substituted notices and Signs**

The following notices and signs are, where applicable, compulsory on the construction site as well as the contraction yards.

Area/Activity where construction sign is needed	Notice or sign required in
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Display of notices and signs	General Safety Regulation 2b
Entry	General Safety Regulation 2 (c)
First Aid box	General Safety Regulation 3 (6)
Toilets and Change rooms	Facilities Regulation 2(5).4 (2) (f)
Hazardous and Chemical Storage area	General Safety Regulation 4 (8) (i) and (ii)
Machinery	General Machinery Regulation 9
Prohibition of smoking and eating or drinking at workplaces where high risk substances are stored or handled	Facilities Regulation 7

#### **8.24.3. First Aid, Emergency Equipment and Procedures**


The Principal Contractor shall comply with Section 3 of the General Safety Regulations regarding first aid, emergency equipment and procedures.

- How he intends to ensure competence of first aiders and
- What emergency equipment will be used

#### **8.24.4. Work in confined spaces**

The Principal Contractor shall comply with Section 5 of the General Safety Regulations regarding work in confined spaces.

- How he intends to ensure competence of the people working in confined spaces.
- What steps to be taken to ensure the safety of the confined space and the air therein

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- What measure he intends to put in place in case of emergency in a confined space

#### **8.24.5. Welding, flame cutting, soldering and similar operations**

The Principal Contractor shall comply with Section 9 of the General Safety Regulations, with regards to the welding, flame cutting, grinding, soldering or similar operations associated with pipework.

How the contractor intends it inform employees of the Safe operations and use of equipment and hazards which may arise


#### **8.24.6 Ladders**

The Principal Contractor shall with reference to Section 13A of the General Safety Regulations and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends ensuring that ladders used are safe and constructed of materials approved for its intended use, and
- What precaution will be made to ensure the stability of ladders in use?

#### **8.24.7. Environmental Conditions**

The Principal Contractor shall comply with the Environmental Regulations for Workplaces, 1987, and shall address the following aspects as described in the regulations in his Health and Safety plan:

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- Thermal requirements,
- Lighting,
- Windows,
- Ventilation,
- Housekeeping,
- Noise and hearing conservation,
- Precautions against flooding, and
- Fire precautions and means of egress.

#### **8.24.8. Hazardous Chemical Substances**

The Principal Contractor will be required to adhere to the Regulations for Hazardous Chemical Substances 1995 as amended in the handling and storage of hazardous chemical substances.

The Principal Contractor must discuss the following in detail in his safety plan in respect of each hazardous chemical substance that will be used in the works:

- Storage of substance
- Handling of substance
- Protective clothing and other devices to be used while handling the substance

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- Medical surveillance.
- How will he ensure that employees are adequately and comprehensively informed and trained

## **8.25. Implementation of Contractors' Health and Safety Plan**

### **8.25.1. General**


The Principal Contractor shall describe in his Health and Safety Plan how he intends implementing his OHS plan.

The Principal Contractor shall indicate the methods he intends using to ensure accurate record keeping of all critical elements identified in his risk assessment and covered in his Health and Safety Plan.

The Principal Contractor shall indicate:

- How internal audits will be carried out,
- How audit findings will be addressed,
- How he would implement the corrective measures and recommendations of internal audits or inputs of employees.
- How he intends to review the safety plans,
- How he would train staff and keep training records


### **8.25.2 Administrative Requirements**

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The Principal Contractor shall comply with the administrative requirements of the Occupational Health and Safety Act and Regulations 85 of 1993 and other legal requirements. The Principal contractor's administrative system will without limiting his obligations cover the following:

- Keeping of a safety file on site,
- Maintenance of his Health and Safety plan,
- Procedures to follow for the appointment of competent persons,
- Construction work permits (where applicable)
- Procedures to follow for notifications,
- Injury on duty [IOD] administration,
- Minutes of safety meetings,
- Inspection checklists/registers,
- Safe keeping of checklists/registers, and
- Internal audits documentation.

The Principal Contractor shall in particular ensure that at least one copy of the Occupational Health and Safety Act, 1993 and its Regulations is available on site for every 5 employees employed.

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### **8.25.3. Incident Reporting, Investigation and Recording**

The Principal Contractor shall comply with Section 9 of the General Administrative Regulations, 1996 and shall in particular (in accordance with section 12) furnish an inspector with information relating to health and safety on the construction site, when requested to do so.

The Principal Contractor shall report all incidents and or occurrences to the Client, investigate and keep record as contemplated by the Occupational Health and Safety Act 85 of 1993 and Regulations.


### **8.25.4. Training**

The Principal Contractor shall train all his employees in accordance with the requirements of section 13 of the Occupational Health and Safety Act, 1993. The Principal Contractor shall ensure that every employee is informed of the following:

- The hazards of any work he has to perform or plant machinery or equipment he is permitted to use, and
- The precautionary measures which should be taken regarding the above.

The Principal Contractor shall, without limiting his obligations, indicate in his Health and Safety Plan how he intends:

- Identifying the training needs of the personnel he intends employing, and
- Implementing the training identified
- What proof of induction training will be carried by his employees

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#### **8.25.4.1. General induction Training**

- All members of the contractor's management as well as all the people appointed as responsible for Occupational Health and Safety in terms of the OHS Act, Construction Regulations and other Regulations are required to attend a general safety Induction
- All employees of the principal contractor and other contractors must be in possession of proof of Induction Training
- All subsequent and newly appointed employees must also be subjected to the Induction Training as soon as possible after the appointment but prior to start work on site.
- All visitors must undergo an induction training on arrival to site

#### **8.25.4.2. Site Specific Induction Training**

The principal contractor will be required to prepare the Task based Induction training based on the risk assessment for the contract work and train all employees who will be involved in the selected task. All employees must have a proof of such training and copies in the Safety File

#### **8.25.4.3. Other Training**

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1. All operators, drivers and users of construction vehicles and mobile plants must be in possession of a valid proof of training and where applicable licenses and proof of competency
2. All employees in jobs requiring competence in terms of the OHS Act and Regulations must be in possession of valid proof of training.

#### **8.25.4.4. Awareness and Promotion**


The Principal Contractor is required to have a promotion and awareness program in place to create an Occupational Health and Safety culture within employees as well as subcontractors. The following are some of the methods that may be used:

- Toolbox Talks
- Posters
- Videos
- Competitions
- Participative activities such As Occupational Health and Safety Circles

#### **8.26. Safety Meetings**

The Principal Contractor shall conduct at least one formal safety meeting per month with his employees to ensure safety awareness and shall maintain appropriate records of attendance and meeting content. Such records shall be included in the safety file. The meetings shall address at least the following:



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- Accident / safety incidents
- Hazardous conditions
- Hazardous materials / substances
- Job or work projections
- Safe Work procedures
- Protective clothing / equipment
- Housekeeping
- Inspections
- General safety topics

### **8.27. Occupational Health and Safety Committees**

The principal contractor must establish Occupational Health and Safety committees consisting of all designated Occupational Health and Safety Representatives together with a number of management Representatives that are not allowed to exceed the number of Safety Reps on the committee. The members of the Safety Committee must be appointed in writing and the appointment letters must be in the Safety File.

The Safety Committee must meet but at least twice a month and consider at least the following agenda items:

- Opening and Welcome


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- Members present, apologies and absent
- Minutes of previous meeting
- Matters arising from the previous meeting
- Safety Representatives inspection reports
- Incident and/or accident investigation reports
- Incident, accident and /or injury statistics
- Audit feedback
- Medical surveillance
- Endorsement of legal OHS registers and other statutory documents by a duly authorized representative of the principal contractor
- General
- Close and next meeting

### **8.28. Inspections and Monitoring**

The Principal Contractor shall be required to inspect each workplace prior to works commencing to ensure that minimum control measures and protective equipment are in place and that by entering the workplace no person will be exposed to any hazard which could affect his health or safety. The Principal Contractor shall without limiting his obligations, indicate the following in his Health and Safety Plan:

- The inspection and monitoring procedures he intends employing to determine the safety of workplaces, and

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- Who will be responsible for the checking of each workplace at the commencement of each shift?

The Principal Contractor shall include in his Health and safety Plan all the checklists he intends using during the inspection and monitoring of the implementation of his Health and Safety Plan.

The Principal Contractor can expect inspections of the works by any of the following parties:

- The Client or Safety Agent,
- Department of Labour Inspector or any authorized person appointed by the Minister as Chief Inspector or his representative.


The Client, Safety Agent or his representative will stop the work at any time under the following conditions:

- If the Contractor is not compliant with his Health and Safety Plan
- Imminent threat to the health and safety of any person on site
- Continuous non-conformance to corrective action requests.
- In the occurrence of section 24 incident
- 

## **8.29. Auditing**

### **8.29.1. Internal Audits**

The Principal Contractor shall conduct periodic site audits as contemplated in section 7.(1.c.vii) of the Construction Regulations 2014

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The Principal Contractor will ensure that the same arrangement detailed above be implemented with his Sub Contractors to ensure his compliance with the Construction Regulations.

#### **8.29.2. Audits by Client or Safety Agent**


The Client or Safety Agent will carry out period audits or follow-up audits, as the case may be, at any time during the construction period provided that:

- i) The audit or follow-up audit are carried out during ordinary working hours, and
- ii) The Client or Safety Agent gives the Contractor at least 48 hours' notice of his intention to carry out such audits.

The audits described above only constitutes part compliance by the Client or the Safety Agent with section 5.(1)(o) of the Construction Regulations, 2014.

The Principal Contractor's employees as indicated in the OHS organogram and the Client's project manager will be present during any audit carried out by the Employer or his Safety Agent.

**NB: The office space of the Principal contractor utilized for the project duration will be audited in line with the requirements of the Occupational Health and Safety Act 85 of 1993 and Regulations.**


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# ANNEXURE 2

## Identified Hazards

In terms of Regulation 5 (1) (a) of the Construction Regulations 2014, the client must prepare a baseline risk assessment for intended construction work project.


**NOTE:** The list of potential hazards is by no means intended to be all inclusive and is not limited to this list, and it remains the responsibility of the Contractor to identify all possible hazards with regards to his scope of work and to put measures in place to mitigate, reduce or control these hazards.


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## BASELINE RISK ASSESSMENTS:

### INSTALLATION OF LIQUID OXYGEN AND NITROGEN TANKS


		INSTALLATION OF LIQUID OXYGEN AND NITROGEN TANKS									
<b>RISK RATING</b>		<b>CONSEQUENCES</b>	<b>PROBABILITY</b>					DATE:			
15-25 EXTREME	S = SAFETY		Almost Certain	Likely	Possible	Unlikely	Almost Impossible	LOCATION	TEMBA AND ROODEPLAAT WATER TREATMENT WORKS		
8 - 14 HIGH	H = HEALTH							SCOPE OF WORK	INSTALLATION OF LIQUID OXYGEN AND NITROGEN TANKS		
4 - 7 MEDIUM	E = ENVIRONMENT		5	4	3	2	1				
1 - 3 LOW	Q=QUALITY										
S FATAL		5	25	20	15	10	5	ASSESSMENT TEAM			
H FATAL											
E Major impact (Long term)											

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S	Serious injury (Reportable)	4	20	16	12	8	4	SAFETY AGENT	P.L MPHAI
H	Permanent none Lethal effect								
E	High impact								
S	Loss Time Injury (Less than 14 Days)	3	15	12	9	6	3	CLIENT	CITY OF TSHWANE
H	Reversible severe effect								
E	High impact (6 Months)								
S	Injury need Medical Assistance	2	10	8	6	4	2		
H	Reversible Minor effect								
E	Slight impact (1 Month)								
S	Minor Injury (First Aid)	1	5	4	3	2	1		
H	No effect								
E	No effect								

	ACTIVITY/ TASK	HAZARDS	RISKS	RISK ANALYSES				CONTROLS	RESIDUAL RSK RATING
				SHE Q	CONSEQUENCE	LIKELIHOOD	RISK RATING		




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1.	The Installation, safe handling, storage and use of the gas.	<ul style="list-style-type: none"> <li>1. Exposure to gas</li> <li>2. Exposure to damaged equipment</li> <li>3. Exposure to running equipment</li> </ul>	<ul style="list-style-type: none"> <li>1. Inhalation of gas which could lead to respiratory/ breathing problems</li> <li>2. Contract covid-19</li> <li>3. Death;</li> <li>4. Injuries;</li> <li>5. Serval injuries</li> </ul>	SH	2	3	6	<ul style="list-style-type: none"> <li>1. PPE – Wear safety gloves, safety glasses and dust masks</li> <li>2. Adhere to COVID-19 protocols</li> <li>3. Medical surveillance</li> <li>4. Standard operating procedure to be adhere to</li> <li>5. Daily inspection of tool and equipment</li> <li>6. Lockout procedure should be in place</li> </ul>	5
2.	Maintenance of flow meters and compressors, greasing of equipment	<ul style="list-style-type: none"> <li>1. Cuts from sharp equipment</li> <li>2. Exposure to contaminated tools</li> <li>3. Running equipment machinery</li> </ul>	<ul style="list-style-type: none"> <li>1. Electrical shock;</li> <li>2. Several injuries Cuts ,buries</li> <li>3. Contaminatio n with COVID -19</li> </ul>	SH	5	2	10	<ul style="list-style-type: none"> <li>1. Competence person to perform the task</li> <li>2. Lock out producer (isolation)</li> <li>3. Inspection of equipment before work</li> </ul>	5
3.	Repairing and replacing of damage or worm out equipment	<ul style="list-style-type: none"> <li>1. Exposure to sharpening tools</li> <li>2. Exposure to Faulty connection a</li> </ul>	<ul style="list-style-type: none"> <li>1. Cuts and bruises</li> <li>2. Electrical shock</li> <li>3. Environmental pollution</li> </ul>	SH	5	2	10	<ul style="list-style-type: none"> <li>1. Inspection of tools and equipment before task</li> <li>2. Medical surveillance for exposed employees</li> <li>3. Fire</li> <li>4. Lock out procedure</li> </ul>	5

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4.	Transportation of equipment and employees	1. Driving without a licenses 2. Equipment not properly packed 3. Overloading of passengers	1. Accidents 2. Roiling over and falling equipment 3. Cross contamination of COVID -19	SH	5	2	10	1. Only person authorized should drive 2. Issuing of COIVD 19 PPE mask ,sanitizer 3. Mounted tool box in vehicles 4.	5
5.	Inspections /checks	1. Contact with life electricity 2. Exposure to Hazards substances 3. Tall grass	1. Electrical shock 2. Coming in to contact with Snake ,Insects	SH	5	3	15	1. Wearing PPE boot, sun hat 2. Medical surveillance 3. Housekeeping to be conducted regularly	5

**The task should not proceed if the risk rating after the controls are implemented is still HIGH or EXTREME.**

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# **ANNEXURE 3** **MANDATORY AGREEMENT** **(SECTION 37.2)**

ARTICLE OF AGREEMENT IN TERMS OF SECTION 37(2) OF THE  
OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 BETWEEN  
THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY  
(Hereinafter referred to as the "CLIENT")  
AND

.....

Herein represented by ..... in  
his/her capacity as ..... duly  
authorised by virtue of a resolution dated .....  
Attached hereto as Annexure A of the said .....  
(hereinafter referred to as the "CONTRACTOR").

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

.....


Contract number

.....

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

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

NOW THEREFORE the parties agree as follows:

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1. The CONTRACTOR undertakes to acquaint the appropriate officials and employees of the CONTRACTOR with all relevant provisions of the ACT and the regulations promulgated in terms thereof.
2. The CONTRACTOR undertakes that all relevant duties, obligations and prohibitions imposed in terms of the ACT and Regulations will be fully complied with: Provided that should the CLIENT prescribe certain arrangements and procedures, that same shall be observed and adhered to by the CONTRACTOR, his officials and employees. The CONTRACTOR shall bear the onus of acquainting himself/herself/itself with such arrangements and procedures.
3. The CONTRACTOR hereby accepts sole liability for such due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures, if any, imposed by the ACT and Regulations and the CONTRACTOR expressly absolves the CLIENT from itself being obliged to comply with any of the aforesaid duties, obligations, prohibitions, arrangements and procedures as the case may be.
4. The CONTRACTOR agrees that any duly authorized officials of the CLIENT shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the CONTRACTOR has complied with this undertaking as more fully set out in paragraphs 1 and 2 above, which steps may include, but shall not be limited to remedy the default of the CONTRACTOR at the cost of the CONTRACTOR.
5. The CONTRACTOR shall be obliged to report forthwith to the CLIENT any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the ACT and Regulations, pursuant to work performed in terms of this agreement, and shall, on written demand, provide full details in writing of such investigation, complaint or criminal charge as the case may be.

Thus signed at PRETORIA for and on behalf of the CLIENT on this the.....day of..... 20 .....

AS WITNESSES:


1. ....

2. ....

.....  
SIGNATURE

.....  
NAME AND SURNAME

.....

 CITY OF <b>TSHWANE</b> IGNITING EXCELLENCE	OCCUPATIONAL HEALTH AND SAFETY SPECIFICATION	
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#### CAPACITY

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

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

AS WITNESSES:

1. ....


2. ....

.....  
SIGNATURE

.....  
NAME AND SURNAME

.....  
CAPACITY

# ANNEXURE 4

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# ACKNOWLEDGEMENT OF RECEIPT OHS SPECIFICATION

## Acknowledgement of receipt of OHS Specification:

Name of Designer/Contractor

-----

I, the undersigned, hereby acknowledge that I have obtained copies of OHS Specification and confirm full compliance to the conclusion of project or construction work.

Signed at .....on this ..... Day of.....20.....

Signature of Designer /Contractor Manager

Date

-----

-----

Signature of Contractor Supervisor

Date

-----

-----

Witness 1 ..... Witness 2 .....