

<b>TENDER DOCUMENT GOODS AND SERVICES</b>		 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD
<b>SUPPLY CHAIN MANAGEMENT</b>		
SCM - 542	Approved by Branch Manager: February 2024	Version: 10

**TENDER NO: 156S/2025/26**

**TENDER DESCRIPTION: PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW**

**CONTRACT PERIOD: UP TO 180 MONTHS FROM THE DATE OF CONTRACT**

**CLOSING DATE** [13 MAY 2026]

**CLOSING TIME** 10:00 am

**TENDER BOX NUMBER** [200]

**TENDER FEE** [R200]

Non – refundable tender fee payable to the City of Cape Town (CCT) for a hard copy of the tender document. This fee is not applicable to website downloads of the tender document.

<b>TENDERER</b>	
<b>NAME of Company/Close Corporation or Partnership / Joint Venture/ Consortium or Sole Proprietor /Individual (hereinafter the "Tenderer")</b>	
<b>TRADING AS (if different from above)</b>	
<b>Registration number of Tenderer</b>	
<b>Physical address and chosen domicilium citandi et executandi of Tenderer</b>	

<b>NATURE OF TENDER OFFER (please indicate below)</b>	
<b>Main Offer (see clause 2.2.11.1)</b>	
<b>Alternative Offer (see clause 2.2.11.1)</b>	

<b>TENDER SERIAL NO.:</b>
<b>SIGNATURES OF CCT OFFICIALS AT TENDER OPENING</b>
<b>1</b>
<b>2</b>
<b>3</b>

## TABLE OF CONTENTS

<b>THE TENDER.....</b>	<b>3</b>
T.1 GENERAL TENDER INFORMATION .....	3
T.2 CONDITIONS OF TENDER .....	4
2.1 General.....	4
2.2 Tenderer's obligations .....	7
2.3 The CCT's undertakings.....	16
<b>THE CONTRACT .....</b>	<b>24</b>
C.1 DETAILS OF TENDERER/SUPPLIER .....	25
C.2 FORM OF OFFER AND ACCEPTANCE .....	26
C.2.1 OFFER (TO BE COMPLETED BY THE TENDERER AS PART OF TENDER SUBMISSION) .....	26
C.2.2 ACCEPTANCE (TO BE COMPLETED BY THE CCT) .....	27
C.2.3 SCHEDULE OF DEVIATIONS (TO BE COMPLETED BY THE CCT UPON ACCEPTANCE) .....	28
C.2.4 CONFIRMATION OF RECEIPT (TO BE COMPLETED BY SUPPLIER UPON ACCEPTANCE).....	29
C.3 OCCUPATIONAL HEALTH AND SAFETY AGREEMENT .....	30
C.4 PRICE SCHEDULE .....	31
C4.1 Pricing Assumptions.....	31
C.5 SPECIFICATION(S).....	34
C.6 SPECIAL CONDITIONS OF CONTRACT .....	37
C.7 GENERAL CONDITIONS OF CONTRACT .....	49
C.8 ANNEXURES .....	59
ANNEXURE A – PRO FORMA INSURANCE BROKER'S WARRANTY .....	59
ANNEXURE B – MONTHLY PROJECT LABOUR REPORT .....	60
ANNEXURE C - PRO FORMA PERFORMANCE SECURITY/ GUARANTEE .....	62
ANNEXURE D - PRO FORMA ADVANCE PAYMENT GUARANTEE .....	64
ANNEXURE E - TENDER RETURNABLE DOCUMENTS.....	66
Schedule E.1: Contract Price Adjustment.....	66
Schedule E.2: Certificate of Authority for Partnerships/ Joint Ventures/ Consortiums .....	67
Schedule E.3: Declaration for Procurement above R10 million.....	68
Schedule E.4: Preference Points Claim Form In Terms Of the Preferential Procurement Regulations 2022 .....	69
Schedule E.5: Declaration of Interest – State Employees (MBD 4 amended).....	72
Schedule E.6: Conflict of Interest Declaration.....	74
Schedule E.7: Declaration of Tenderer's Past Supply Chain Management Practices (MBD 8).....	75
Schedule E.8: Authorisation for the Deduction of Outstanding Amounts Owed to the CCT .....	77
Schedule E.9: Certificate of Independent Tender Determination.....	78
Schedule E.10: Proposed Deviations And Qualifications By Tenderer.....	79
Schedule E.11: List of Other Documents Attached By Tenderer.....	80
Schedule E.12: Record of Addenda to Tender Documents .....	81
Schedule E.13: Information to Be Provided With the Tender.....	82
Schedule F.14: Appeal Application.....	83
Schedule E.15-A: Concluded an Energy Contract with a Generator and/or has generation assets under its portfolio .....	84
Schedule E.15-B: Concluded an Energy Contract with a customer .....	85
Schedule E.15-C: Demonstrated Market Trading Execution .....	86
ANNEXURE F – WORK ORDER REQUEST RETURNABLES.....	87
Schedule F.1: Key Technical Details .....	87
Schedule F.2: Annualized Generation Profile .....	88
Schedule F.3: Hourly Generation Profile .....	89
Annexure G – HDI Evidence.....	90
Annexure H – Works Order Allocation .....	91
Annexure I: Power Purchase Agreement .....	93

# THE TENDER

## T.1 GENERAL TENDER INFORMATION

TENDER ADVERTISED	:	<b>[13 FEBRUARY 2026]</b>
SITE VISIT/CLARIFICATION MEETING	:	Time: <b>[10:00]</b> on Date: <b>[20 FEBRUARY 2026]</b> (Not compulsory, but strongly recommended)
VENUE FOR SITE VISIT/CLARIFICATION MEETING	:	<b>[Virtual/ on-line Teams: <a href="#">Join the meeting now</a>]</b>
TENDER BOX & ADDRESS	:	<b>Tender Box as per front cover</b> at the <b>Tender &amp; Quotation Boxes Office</b> , 2 <sup>nd</sup> Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town.  : The Tender Document (which includes the Form of Offer and Acceptance) completed and signed in all respects, plus any additional supporting documents required, must be submitted in a sealed envelope with the name and address of the tenderer, the endorsement <b>"TENDER NO. [156S/2025/26]: - TENDER DESCRIPTION: [PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW]</b> , the tender box number. and the closing date indicated on the envelope. The sealed envelope must be inserted into the appropriate official tender box before closing time. If the tender offer is too large to fit into the abovementioned box or the box is full, please enquire at the public counter (Tender Distribution Office) for alternative instructions. It remains the tenderer's responsibility to ensure that the tender is placed in either the original box or as alternatively instructed.
CCT TENDER REPRESENTATIVE	:	Email: <b>SEM.Procurement@capetown.gov.za</b> and <b>SCM.Tenders12@capetown.gov.za</b>

**TENDERERS MUST NOTE THAT WHEREVER THIS DOCUMENT REFERS TO ANY PARTICULAR TRADE MARK, NAME, PATENT, DESIGN, TYPE, SPECIFIC ORIGIN OR PRODUCER, SUCH REFERENCE SHALL BE DEEMED TO BE ACCOMPANIED BY THE WORDS "OR EQUIVALENT"**

## T.2 CONDITIONS OF TENDER

### 2.1 General

#### 2.1.1 Actions

**2.1.1.1** The City of Cape Town (hereafter referred to as the "CCT") and each tenderer submitting a tender offer (hereinafter referred to as the "tenderer" or the "supplier") shall comply with item T.2 of this Tender Document Goods and Services (hereinafter referred to as these "Conditions of Tender"). The tenderer and the CCT shall collectively hereinafter be referred to as the "Parties" and individually a "Party"). In their dealings with each other, the Parties shall discharge their duties and obligations as set out in these Conditions of Tender, timeously and with integrity, and behave equitably, honestly and transparently, and shall comply with all legal obligations imposed on the Parties herein and in accordance with all applicable laws.

**The Parties agree that this tender Tender Document Goods and Services (hereinafter referred to as the "Tender" / "Tender Document"), its evaluation and acceptance and any resulting contract shall also be subject to the CCT's Supply Chain Management Policy ("SCM Policy") that was applicable on the date the bid was advertised and as amended from time to time. If the CCT adopts a new SCM Policy which contemplates that any clause therein would apply to the Contract emanating from this tender (hereinafter referred to as the "Contract"), such clause shall also be applicable to that Contract. Please refer to this document contained on the CCT's website.**

**Abuse of the supply chain management system is not permitted and may result, inter alia, (1) in the tender being rejected; (2) cancellation of the contract; (3) restriction of the supplier, and/or (4) the exercise by the CCT of any other remedies available to it as provided for in the SCM Policy and/or the the Contract and/or this tender and/or any applicable laws .**

**2.1.1.2** The CCT, the tenderer and their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the CCT shall declare any conflict of interest to the CCT at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

**2.1.1.3** The CCT shall not seek, and a tenderer shall not submit a tender, without having a firm intention and capacity to proceed with the contract.

#### 2.1.2 Interpretation

**2.1.2.1** The additional requirements contained in Annexure F to the contract (hereinafter referred to as the "returnable documents" / "Returnable Schedules") are part of these Conditions of Tender and are specifically hereby incorporated into these Conditions of Tender.

**2.1.2.2** These Conditions of Tender and returnable Documents which are required for CCT's tender evaluation purposes herein, shall form part of the Contract arising from the CCT's corresponding invitation to tender.

#### 2.1.3 Communication during tender process

Verbal or any other form of communication, from the CCT, its employees, agents or advisors during site visits/clarification meetings or at any other time prior to the award of the Contract, will not be regarded as binding on the CCT, unless communicated by the CCT in writing to suppliers / tenderers by its Director: Supply Chain Management or his nominee. Similarly, any communication of the tenderer / supplier that is not reduced to writing by the tenderer / supplier, its employees, agents or advisors, shall not be regarded as binding on the CCT, unless communicated to the CCT in writing by the suppliers / tenderers, or their duly authorised representatives.

## 2.1.4 The CCT's right to accept or reject any tender offer

2.1.4.1 The CCT may accept or reject any tender offer and may cancel the corresponding tender process or reject all tender offers at any time before the formation of a contract. The CCT may, prior to the award of the tender, cancel a tender if:

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested;  
or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received;
- (d) there is a material irregularity in the tender process; or
- (e) the Parties are unable to negotiate market related pricing.

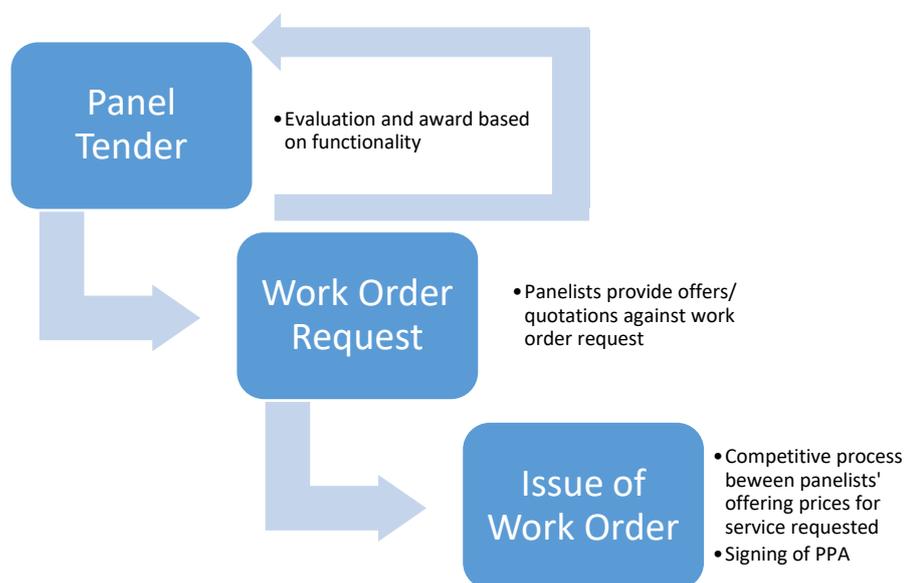
The CCT shall not accept or incur any liability to a tenderer for such cancellation or rejection, but will give written reasons for such action upon receiving a written request to do so.

## 2.1.5 Procurement procedures

### 2.1.5.1 General

The CCT intends to appoint several tenderers or a single tenderer, but reserves the right to appoint fewer tenderers to a panel, or not to appoint a panel at all.

Suppliers, once appointed and subject to operational requirements, will be invited to deliver the goods and services after a secondary competitive process is undertaken, based upon the rates tendered and the status level of contribution as verified during the awarding of the tender. This process is outlined below and under Section 5.7 of the specification.



Work order requests will be made to the panel, and responsive offers will be ranked as per Clause 2.3.10.3. The CCT will award, according to this ranking (highest to lowest), up to the accumulated contracted capacity specified in the work order request.

The work order shall be for a period of up to 180 months from the commencement date of the work order. The panel contract shall be for a period of up to 180 months from the commencement date subject to successful completion and approval of an MFMA Section 33 process.

## 2.1.6 Objections, complaints, queries and disputes/ Appeals in terms of Section 62 of the Systems Act/ Access to court

### 2.1.6.1 Disputes, objections, complaints and queries

In terms of Regulations 49 and 50 of the Local Government: Municipal Finance Management Act, 56

of 2003 Municipal Supply Chain Management Regulations (Board Notice 868 of 2005):

- a) Persons aggrieved by decisions or actions taken by the CCT in the implementation of its supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint or query or dispute against the decision or action.

#### **2.1.6.2 Appeals**

- a) In terms of Section 62 of the Local Government: Municipal Systems Act, 32 of 2000 a person whose rights are affected by a decision taken by the CCT, may appeal against that decision by giving written notice of the appeal and reasons to the City Manager within 21 days of the date of the notification of the decision.
- b) An appeal must contain the following:
  - i. Must be in writing
  - ii. It must set out the reasons for the appeal
  - iii. It must state in which way the Appellant's rights were affected by the decision;
  - iv. It must state the remedy sought; and
  - v. It must be accompanied with a copy of the notification advising the person of the decision
- c) The relevant CCT appeal authority must consider the appeal and **may confirm, vary or revoke** the decision that has been appealed, but no such revocation of a decision may detract from any rights that may have accrued as a result of the decision.

#### **2.1.6.3 Right to approach the courts and rights in terms of Promotion of Administrative Justice Act, 3 of 2000 and Promotion of Access to Information Act, 2 of 2000**

The sub- clauses above do not influence any affected person's rights to approach the High Court at any time or its rights in terms of the Promotion of Administrative Justice Act (PAJA) and Promotion of Access to Information Act (PAIA).

- 2.1.6.4** All requests referring to sub clauses 2.1.6.1 and 2.1.6.2 must be submitted in writing to:  
**The City Manager** - C/o the Manager: Legal Compliance Unit, Legal Services Department, Office of the City Manager  
**Via hand delivery at:** 20<sup>th</sup> Floor, Tower Block, 12 Hertzog Boulevard, Cape Town 8001  
**Via post at:** Private Bag X918, Cape Town, 8000  
**Via email at:** [MSA.Appeals@capetown.gov.za](mailto:MSA.Appeals@capetown.gov.za)

- 2.1.6.5** All requests referring to clause 2.1.6.3 must be submitted in writing to:  
**The City Manager** - C/o the Manager: Access to Information Unit, Legal Service Department, Office of the City Manager  
**Via hand delivery at:** 20th Floor, Tower Block, 12 Hertzog Boulevard, Cape Town 8001  
**Via post at:** Private Bag X918, Cape Town, 8000  
**Via email at:** [Access2info.Act@capetown.gov.za](mailto:Access2info.Act@capetown.gov.za)

#### **2.1.6.6 The minimum standards regarding accessing and 'processing' of any personal information belonging to another in terms of Protection of Personal Information Act, 2013 (POPIA).**

For purposes of this clause 2.1.6.6, the contract and these Conditions of Tender, the terms "data subject", "Personal Information" and "Processing" shall have the meaning as set out in section 1 of POPIA, and "Process" shall have the corresponding meaning.

The CCT, its employees, representatives and sub-contractors may, from time to time, Process the tenderer's and/or its employees', representatives' and/or sub-contractors' Personal Information, for purposes of, and/or relating to, the tender, the contract and these Conditions of Tender, for research purposes, and/or as otherwise may be envisaged in the CCT's Privacy Notice and/or in relation to the CCT's Supply Chain Management Policy or as may be otherwise permitted by law. This includes the Processing of the latter Personal Information by the CCT's due diligence assurance provider, professional advisors and the Appeal Authority as applicable. The CCT's justification for the processing of such aforesaid Personal Information is based on section 11(1)(b) of POPIA, i.e., in terms of which the CCT's Processing of the said Personal Information is necessary to carry out actions for the conclusion and/or performance of the contract, to which the applicable data subject (envisaged in this clause 2.1.6.6 above) is a party.

All requests relating to data protection must be submitted in writing to:  
The City Manager - C/o the Information Officer, Office of the City Manager  
Via hand delivery at: 20th Floor, Tower Block, 12 Hertzog Boulevard, Cape Town 8001  
Via post at: Private Bag X9181, Cape Town, 8000  
Via email at: [Popia@capetown.gov.za](mailto:Popia@capetown.gov.za).

### **2.1.6.7 Compliance to the CCTs Appeals Policy.**

In terms of the CCT's Appeals Policy, a fixed upfront administration fee will be charged. In addition, a surcharge may be imposed for vexatious and frivolous or otherwise manifestly inappropriate tender related appeals.

The current approved administration fee is R300.00 and may be paid at any of the Municipal Offices or at the Civic Centre in Cape Town using the GL Data Capture Receipt attached as Annexure F.13: Appeal Application Form. Alternatively, via EFT into the CCT's NEDBANK Account: CITY OF CAPE TOWN and using Reference number: 198158966. You are required to send proof of payment when lodging your appeal.

The current surcharge for vexatious and frivolous or otherwise manifestly inappropriate tender related appeals will be calculated as  $\frac{1}{2}$  (Administrative cost of the tender appeal) + 0.25 % (Appellant's tender price).

Should the payment of the administration fee of R300.00 or the surcharge not be received, such fee or surcharge will be added as a Sundry Tariff to the bidder's municipal account.

In the event where the bidder does not have a Municipal account with the CCT, the fee or surcharge may be recovered in terms of the CCT's Credit Control and Debt Collection By-law, 2006 (as amended) and its Credit Control and Debt Collection Policy.

### **2.1.7 CCT Supplier Database Registration**

Tenderers are required to be registered on the CCT Supplier Database as a service provider. Tenderers must register as such upon being requested to do so in writing and within the period contained in such a request, failing which no orders can be raised or payments processed from the resulting contract. In the case of Joint Venture partnerships this requirement will apply individually to each party of the Joint Venture.

Tenderers who wish to register on the CCT's Supplier Database may collect registration forms from the Supplier Management Unit located within the Supplier Management / Registration Office, 2<sup>nd</sup> Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5). Registration forms and related information are also available on the CCT's website [www.capetown.gov.za](http://www.capetown.gov.za) (follow the Supply Chain Management link to Supplier registration).

It is each tenderer's responsibility to keep all the information on the CCT Supplier Database updated.

### **2.1.8 National Treasury Web Based Central Supplier Database (CSD) Registration**

Tenderers are required to be registered on the National Treasury Web Based Central Supplier Database (CSD) as a service provider. Tenderers must register as such upon being requested to do so in writing and within the period contained in such a request, failing which no orders can be raised or payments processed from the resulting contract. In the case of Joint Venture partnerships this requirement will apply individually to each party of the Joint Venture.

Tenderers who wish to register on the National Treasury Web Based Central Supplier Database (CSD) may do so via the web address <https://secure.csd.gov.za>.

It is each tenderer's responsibility to keep all the information on the National Treasury Web Based Central Supplier Database (CSD) updated.

## **2.2 Tenderer's obligations**

### **2.2.1 Eligibility Criteria**

**2.2.1.1 Tenderers are obligated to submit a tender offer that complies in all aspects to the conditions as detailed in this tender document and the Conditions of Tender. An 'acceptable tender must "COMPLY IN ALL" aspects with the tender, Conditions of Tender, all Specifications (i.e., item C.5 below, hereinafter the "Specifications"), pricing instructions herein and the Contract including its conditions.**

#### 2.2.1.1.1 Submit a tender offer

Only those tender submissions from which it can be established, *inter alia* that a clear, irrevocable and unambiguous offer has been made to CCT, by whom the offer has been made and what the offer constitutes, will be declared responsive.

#### 2.2.1.1.2 Compliance with requirements of CCT SCM Policy and procedures

Only those tenders that are compliant with the requirements below will be declared responsive:

- a) A completed **Details of Tenderer** to be provided (applicable schedule below to be completed);
- b) A completed **Certificate of Authority for Partnerships/ Joint Ventures/ Consortiums** to be provided authorising the tender to be made and the signatory to sign the tender on the partnership /joint venture/consortium's (applicable schedule below to be completed);
- c) A copy of the partnership / joint venture / consortium agreement to be provided, where applicable.
- d) A completed **Declaration of Interest – State Employees** to be provided and which does not indicate any non-compliance with the legal requirements relating to state employees (applicable schedule below to be completed);
- e) A completed **Declaration – Conflict of Interest and Declaration of Bidders' past Supply Chain Management Practices** to be provided and which does not indicate any conflict or past practises that renders the tender non-responsive based on the conditions contained thereon (applicable schedules below to be completed);
- f) A completed **Certificate of Independent Bid Determination** to be provided and which does not indicate any non-compliance with the requirements of the schedule (applicable schedule below to be completed);
- g) The tenderer (including any of its representatives, directors or members), has not been restricted in terms of abuse of the Supply Chain Management Policy,
- h) The tenderer's tax matters with SARS are in order, or the tenderer is a foreign supplier that is not required to be registered for tax compliance with SARS;
- i) The tenderer is not an advisor or consultant contracted with the CCT whose prior or current obligations creates any conflict of interest or unfair advantage;
- j) The tenderer is not a person, advisor, corporate entity or a director of such corporate entity, who is directly or indirectly involved or associated with the bid specification committee;
- k) A completed **Authorisation for the Deduction of Outstanding Amounts Owed to the CCT** to be provided and which does not indicate any details that renders the tender non-responsive based on the conditions contained thereon (applicable schedules below to be completed);
- l) The tenderer (including any of its representatives, directors or members), has not been found guilty of contravening the Competition Act 89 of 1998, as amended from time to time;
- m) The tenderer (including any of its representatives, directors or members), has not been found guilty on any other basis listed in the Supply Chain Management Policy.

#### 2.2.1.1.3 Compulsory clarification meeting

Not applicable.

#### 2.2.1.1.4 Electricity Trading License

As mandated by the Electricity Regulation Act, 2006, any entity involved in electricity trading for commercial purposes must obtain a license from the National Energy Regulator of South Africa (NERSA). Only bidders who are in a possession of a valid trading license issued by NERSA; or provide confirmation of submissions for application for a trading license from NERSA, at the time of tender close, will be declared responsive.

The evidence required must take the form of a license certificate issued by NERSA, or a confirmation letter from NERSA of submission of application for a trading license, to the tendering entity. This includes tendering entities who bid in partnerships including but not limited to arrangements such as Joint Ventures, Consortia, etc. The CCT reserves the right to verify the license certificate validity. Refer to Schedule E13.

#### 2.2.1.1.5 Minimum score for functionality

**Minimum score for functionality is 60/100.**

Only those tenders submitted by tenderers who achieve the minimum score for functionality as stated below will be declared responsive.

The description of the functionality criteria and the maximum possible score for each is shown in the table below. The score achieved for functionality will be the sum of the scores achieved, in the evaluation process, for the individual criteria.

Evaluation Criteria	Applicable values/points	Weight
<b>Track Record and Experience of Tendering Entity (including JV/Consortium partners)</b>		
<p>A. Concluded an Energy Contract with a generator and/or has generation assets under its portfolio</p> <p>The power generation plant project with a contracted capacity of at least 5 MWac must have reached financial close</p> <p><b>Schedule E.15-A to be completed</b></p>	<p>≥ 4 projects: 35 points</p> <p>= 3 projects: 30 points</p> <p>= 2 projects: 25 points</p> <p>= 1 project: 20 points</p> <p>= 0 project: 0 points</p>	35
<p>B. Concluded an Energy Contract with a customer</p> <p>Conclusion of a power purchase, wheeling or power trading agreement with a contracted capacity of at least 1 MWac</p> <p><b>Schedule E.15-B to be completed</b></p>	<p>≥ 4 projects: 35 points</p> <p>= 3 projects: 30 points</p> <p>= 2 projects: 25 points</p> <p>= 1 project: 20 points</p> <p>= 0 project: 0 points</p>	35
<p>C. Demonstrated Market Trading Execution</p> <p>Evidence of accumulated traded volumes (GWh) across contracts over past 5 years.</p> <p><b>Schedule E.15-C to be completed</b></p>	<p>≥ 20 GWh: 30 points</p> <p>Greater than or equal to 15 GWh and less than 20 GWh: 25 points</p> <p>Greater than or equal to 10 GWh and less than 15 GWh: 20 points</p> <p>Greater than or equal to 5 GWh and less than 10 GWh: 10 points</p> <p>&lt; 5GWh: 0 points</p>	30
<b>Total</b>		<b>100</b>

The minimum qualifying score for functionality is **[60]** out of a maximum of **[100]**.

Where the entity tendering is a Joint Venture, the tenderer's tender response must be accompanied by a statement describing exactly what aspects of the work will be undertaken by each party to the joint venture.

Tenderers shall ensure that all relevant information has been submitted with the tender offer in the prescribed format to ensure optimal scoring of functionality points for each Evaluation Criteria. Failure to provide all information **IN THIS TENDER SUBMISSION** could result in the tenderer not being able to achieve the specified minimum scoring. Furthermore information/ evidence provided may be subject to verification and may alter the final scoring as a result.

A more detailed explanation of the functionality criteria is given below:

Qualifying / suitable evidence in order to score points against the stipulated criteria is described below.

**“Completed”** means that the corresponding deliverables with respect to the corresponding evaluation criterion was successfully delivered, and should be accompanied by the relevant supporting evidence as below..

- A. Concluded an Energy Contract with a generator and/or has generation assets under its portfolio – suitable verifiable evidence:
- A signed letter from the seller to the Company confirming an Energy Contract has been concluded; accompanied by:
    - If the generation asset is still to be constructed - A signed financial close confirmation letter or certificate from the lender or financing institution indicating financial close has been achieved and/or; draw down notice from lender or financing institution;
    - If the generation asset has reached commercial operation – A grid connection energised and formally confirmed (Eskom/municipal energisation) certificate
- B. Concluded an Energy Contract with a customer – suitable verifiable evidence:
- A signed Power Purchase, Wheeling or Power Trading Agreement between the Company and its customer and/or
  - A signed letter from customer that a Power Purchase, Wheeling or Power Trading Agreement between the Company and the customer is effective. The letter must include details of the contracted capacity and effective date of contract.
- C. Demonstrated Market Trading Execution
- Energy Invoices Issued and Paid (showing traded kWh or rand value) and/or;
  - Statements from Market Operator (e.g. Eskom, Municipality, Private Trading Platform) and/or;
  - Metering or Reconciliation Reports (from either the local authority or Eskom/NTCSA)

The total (cumulative) evidence/ completed deliverables of all members / parties in a tendering entity will be considered. In instances where the same project/ deliverable is cited by different members of the tendering entity, only one project/ deliverable will be considered towards the scoring of that particular criteria (i.e. no double counting will be permitted).

One project may be scored under multiple functional criteria, if sufficient information is provided where the tenderer’s roles or responsibilities on the project/ deliverables in question is indicated

Supporting evidence must have contactable references (at minimum names, e-mail and telephonic correspondence details). If the evaluation committee is unable to verify information, the corresponding points may not be awarded.

Documentation must feature the entity or members of the entity, where there were name changes such evidence must be provided]

#### **2.2.1.1.7 Provision of samples**

Not applicable

#### **2.2.2 Cost of tendering**

The CCT will not be liable for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

#### **2.2.3 Check documents**

The documents issued by the CCT for the purpose of a tender offer are listed in the index of this tender document.

Before submission of any tender, the tenderer should check the number of pages, and if any are found to be missing or duplicated, or the figures or writing is indistinct, or if the Price Schedule contains any obvious errors, the tenderer must apply to the CCT at once to have the same rectified.

#### **2.2.4 Confidentiality and copyright of documents**

The tenderer shall treat as strictly confidential all matters arising in connection with the tender. Use and copy the documents issued by the CCT only for the purpose of preparing and submitting a tender offer in response to the invitation.

#### **2.2.5 Reference documents**

The tenderer shall obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, Conditions of Contract and other publications, which are not attached but which are incorporated into the tender document(s) by reference.

#### **2.2.6 Acknowledge and comply with notices**

The tenderer shall acknowledge receipt of notices to the tender documents, which the CCT may issue, and shall fully comply with all instructions issued in the said notices, and if necessary, apply for an extension of the closing time stated on the front page of the tender document, in order to take the notices into account. Notwithstanding any requests for confirmation of receipt of the said notices issued, the tenderer shall be deemed to have received such notices if the CCT can show proof of transmission thereof via electronic mail, facsimile, or registered post or other lawful means.

#### **2.2.7 Clarification meeting**

The tenderer shall attend, where required, a clarification meeting at which tenderers may familiarise themselves with aspects of the proposed work, services or supply and pose questions. Details of the meeting(s) are stated in the General Tender Information (i.e., in item T.1 above).

Tenderers should be represented at the site visit/clarification meeting by a duly authorised person who is suitably qualified and experienced to comprehend the implications of the work involved.

#### **2.2.8 Seek clarification**

The tenderer shall request clarification of the tender documents, if necessary, by notifying the CCT at least one week before the closing time stated in the General Tender Information (i.e., in item T.1 above), where possible.

#### **2.2.9 Pricing the tender offer**

**2.2.9.1** The tenderer shall comply with all pricing instructions as stated on the Price Schedule.

#### **2.2.10 Alterations to documents**

The tenderer shall not make any alterations or additions to the tender documents, except to comply with instructions issued by the CCT in writing, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

#### **2.2.11 Alternative tender offers**

**2.2.11.1** Unless otherwise stated in the Conditions of Tender, the tenderers may submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted.

If a tenderer wishes to submit an alternative tender offer, he/she/it shall do so as a separate offer on a complete set of tender documents. The alternative tender offer shall be submitted in a separate sealed envelope clearly marked "Alternative Tender" in order to distinguish it from the main tender offer.

Only the alternative of the highest ranked acceptable main tender offer (that is, submitted by the same tenderer) will be considered, and if appropriate, recommended for award.

Alternative tender offers of any but the highest ranked main tender offer will not be considered.

An alternative tender offer to the highest ranked acceptable main tender offer that is priced higher than the main tender offer may be recommended for award, provided that the ranking of the alternative tender offer is higher than the ranking of the next ranked acceptable main tender offer.

The CCT will not be bound to consider alternative tenders and shall have sole discretion in this regard.

In the event that the alternative is accepted, the tenderer warrants that the alternative offer complies in all respects with the CCT's standards and requirements as set out in the tender document.

**2.2.11.2** Acceptance of an alternative tender offer by the CCT may be based only on the criteria stated in the Conditions of Tender or applicable criteria otherwise acceptable to the CCT.

#### **2.2.12 Submitting a tender offer**

**2.2.12.1** The tenderer is required to submit one tender offer only on the original tender documents as issued by the CCT, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the Conditions of Contract and described in the Specifications. Only those tenders submitted on the tender documents as issued by the CCT together with all Tender Returnable Documents duly completed and signed will be declared responsive.

**2.2.12.2** The tenderer shall return the entire tender document to the CCT after completing it in its entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

**2.2.12.3** The tenderer shall sign the original tender offer where required in terms of the Conditions of Tender. The tender shall be signed by a person duly authorised by the tenderer to do so. Tenders submitted by joint ventures of two or more firms shall be accompanied by the document of formation / founding document of the joint venture or any other document signed by all Parties, in which is defined precisely the conditions under which the joint venture will function, its period of duration, the persons authorised to represent and obligate it, the participation of the several firms forming the joint venture, and any other information necessary to permit a full appraisal of its functioning. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner.

**2.2.12.4** Where a two-envelope system is required in terms of the Conditions of Tender, place and seal the returnable documents listed in the Conditions of Tender in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the CCT's address and identification details stated in the General Tender Information (i.e., item T.1 above), as well as the tenderer's name and contact address.

**2.2.12.5** The tenderer shall seal the original tender offer and copy packages together in an outer package that states on the outside only the CCT's address and identification details as stated in the General Tender Information. . If it is not possible to submit the original tender and the required copies (see 2.2.12.3) in a single envelope, then the tenderer must seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY" in addition to the aforementioned tender submission details.

**2.2.12.6** The CCT shall not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

**2.2.12.7** Tender offers submitted by facsimile or e-mail will be rejected by the CCT, unless stated otherwise in the Conditions of Tender.

**2.2.12.8** By signing the offer part of the Form of Offer (**Section C.2**) the tenderer warrants and agrees that all

information provided in the tender submission is true and correct.

**2.2.12.9** Tenderers shall properly deposit its bid in the designated tender box (as detailed on the front page of this tender document) on or before the closing date and before the closing time, in the relevant tender box at the Tender & Quotation Boxes Office situated on the 2nd floor, Concourse Level, Civic Centre, 12 Hertzog Boulevard, Cape Town. If the tender submission is too large to fit in the allocated box, please enquire at the public counter for assistance.

**2.2.12.10** The tenderer must record and reference all information submitted contained in other documents for example cover letters, brochures, catalogues, etc. in the Returnable Schedule titled **List of Other Documents Attached by Tenderer**.

### **2.2.13 Information and data to be completed in all respects**

Tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the CCT as non-responsive.

### **2.2.14 Closing time**

**2.2.14.1** The tenderer shall ensure that the CCT receives the tender offer, together with all applicable documents specified herein, at the address specified in the General Tender Information herein prior to the closing time stated on the front page of the tender document.

**2.2.14.2** If the CCT extends the closing time stated on the front page of the tender document for any reason, the requirements of these Conditions of Tender apply equally to the extended deadline.

**2.2.14.3** The CCT shall not consider tenders that are received after the closing date and time for such a tender (late tenders).

### **2.2.15 Tender offer validity and withdrawal of tenders**

**2.2.15.1** The tenderer shall warrant that the tender offer(s) remains valid, irrevocable and open for acceptance by the CCT at any time for a period of 120 days after the closing date stated on the front page of the tender document.

**2.2.15.2** Notwithstanding the period stated in clause 2.2.15.1 above, bids shall remain valid for acceptance for a period of twelve (12) months after the expiry of the original validity period, unless the CCT is notified in writing of anything to the contrary by the bidder. The validity of bids may be further extended by a period of not more than six months subject to mutual agreement by the parties, administrative processes and upon approval by the City Manager, unless the required extension is as a result of an appeal process or court ruling.

In circumstances where the validity period of a tender has expired, and the tender has not been awarded, the tender process is considered "completed", despite there being no decision (award or cancellation) made. This anomaly does not fall under any of the listed grounds of cancellation and should be treated as a "non award". A "non award" is supported as a recommendation to the CCT's Bid Adjudication Committee ("BAC") for noting.

**2.2.15.3** A tenderer may request in writing, after the closing date, that its tender offer be withdrawn. Such withdrawal will be permitted or refused at the sole discretion of the CCT after consideration of the reasons for the withdrawal, which shall be fully set out by the tenderer in such written request for withdrawal. Should the tender offer be withdrawn in contravention hereof, the tenderer agrees that:

- a) it shall be liable to the CCT for any additional expense incurred or losses suffered by the CCT in having either to accept another tender or, if new tenders have to be invited, the additional expenses incurred or losses suffered by the invitation of new tenders and the subsequent acceptance of any other tender;
- b) the CCT shall also have the right to recover such additional expenses or losses by set-off against monies which may be due or become due to the tenderer under this or any other tender or contract or against any guarantee or deposit that may have been furnished by the

tenderer or on its behalf for the due fulfilment of this or any other tender or contract. Pending the ascertainment of the amount of such additional expenses or losses, the CCT shall be entitled to retain such monies, guarantee or deposit as security for any such expenses or loss, without prejudice to the CCT's other rights and/or remedies available to it in accordance with any applicable laws.

#### **2.2.16 Clarification of tender offer, or additional information, after submission**

Tenderer's shall promptly provide clarification of its tender offer, or additional information, in response to a written request to do so from the CCT during the evaluation of tender offers within the time period stated in such request. No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

Note: This clause does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the CCT elect to do so.

Failure, or refusal, to provide such clarification or additional information within the time for submission stated in the CCT's written request may render the tender non-responsive.

#### **2.2.17 Provide other material**

**2.2.17.1** Tenderer's shall promptly provide, upon request by the CCT, any other material that has a bearing on the tender offer, the tenderer's commercial position (including joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the CCT for the purpose of the evaluation of the tender. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the CCT's request, the CCT may regard the tender offer as non-responsive.

**2.2.17.2** The tenderer shall provide, on written request by the CCT, where the transaction value inclusive of VAT **exceeds R 10 million**:

- a) audited annual financial statement for the past 3 years, or for the period since establishment if established during the past 3 years, if required by law to prepare annual financial statements for auditing;
- b) a certificate signed by the tenderer certifying that the tenderer has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
- c) particulars of any contracts awarded to the tenderer by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- d) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic.

Each entity to a Consortium/Joint Venture bid shall submit separate certificates/statements in the above regard.

**2.2.17.3** Tenderers shall be required to undertake to fully cooperate with the CCT's external service provider appointed to perform a due diligence review and risk assessment upon receipt of such written instruction from the CCT.

#### **2.2.18 Samples, inspections, tests and analysis**

Tenderers shall provide access during working hours to premises for inspections, tests and analysis as provided for in the Conditions of Tender or Specifications.

If the Specifications requires the tenderer to provide samples, these shall be provided strictly in accordance with the instructions set out in the Specification.

If such samples are not submitted as required in the bid documents or within any further time stipulated by the CCT in writing, then the bid concerned may be declared non-responsive.

The samples provided by all successful bidders will be retained by the CCT for the duration of any subsequent contract. Bidders are to note that samples are requested for testing purposes therefore samples submitted to the CCT may not in all instances be returned in the same state of supply and in other instances may not be returned at all. Unsuccessful bidders will be advised by the Project Manager or dedicated CCT Official to collect their samples, save in the aforementioned instances where the samples would not be returned.

### **2.2.19 Certificates**

The tenderer must provide the CCT with all certificates as stated below:

#### **2.2.19.1. Preference Points for Specific Goals**

In order to qualify for preference points for HDI and/or Specific Goals, it is the responsibility of the tenderer to submit documentary proof (Company registration certification, Central Supplier Database report, BBBEE certificate, Proof of Disability, Financial Statements, commissioned sworn affidavits, etc.) in support of tenderer claims for such preference for that specific goal.

Tenderers are further referred to the content of the Preference Schedule for the full terms and conditions applicable to the awarding of preference points.

#### **2.2.19.2 Evidence of tax compliance**

Tenderers shall be registered with the South African Revenue Service (SARS) and their tax affairs must be in order and they must be tax compliant subject to the requirements of clause 2.2.1.1.2.h. In this regard, it is the responsibility of the Tenderer to submit evidence in the form of a valid Tax Compliance Status PIN issued by SARS to the CCT at the Supplier Management Unit located within the Supplier Management / Registration Office, 2<sup>nd</sup> Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5), or included with this tender. The tenderer must record its Tax Compliance Status PIN number on the **Details of Tenderer** pages of the tender submission.

Each party to a Consortium/Joint Venture shall submit a separate Tax Compliance Status Pin.

Before making an award the CCT must verify the bidder's tax compliance status. Where the recommended bidder is not tax compliant, the bidder should be notified of the non-compliant status and be requested to submit to the CCT, within 7 working days, written proof from SARS that they have made arrangement to meet their outstanding tax obligations. The proof of tax compliance submitted by the bidder must be verified by the CCT via CSD or e-Filing. The CCT should reject a bid submitted by the bidder if such bidder fails to provide proof of tax compliance within the timeframe stated herein.

Only foreign suppliers who have answered "NO" to all the questions contained in the Questionnaire to Bidding Foreign Suppliers section on the **Details of Tenderer** pages of the tender submission, are not required to register for a tax compliance status with SARS.

### **2.2.20 Compliance with Occupational Health and Safety Act, 85 of 1993**

Tenderers are to note the requirements of the Occupational Health and Safety Act, 85 of 1993. The Tenderer shall be deemed to have read and fully understood the requirements of the above Act and Regulations and to have allowed for all costs in compliance therewith.

In this regard the Tenderer shall submit **upon written request to do so by the CCT**, a Health and Safety Plan in sufficient detail to demonstrate the necessary competencies and resources to deliver the goods or services all in accordance with the Act, Regulations and Health and Safety Specification.

### **2.2.21 Claims arising from submission of tender**

By responding to the tender herein, the tenderer warrants that it has:

- a) Inspected the Specifications and read and fully understood the Conditions of Contract.
- b) Read and fully understood the whole text of the Specifications and Price Schedule and thoroughly acquainted himself with the nature of the goods or services proposed and generally of all matters which may influence the Contract.

- c) visited the site(s) where delivery of the proposed goods will take place, carefully examined existing conditions, the means of access to the site(s), the conditions under which the delivery is to be made, and acquainted himself with any limitations or restrictions that may be imposed by the Municipal or other Authorities in regard to access and transport of materials, plant and equipment to and from the site(s) and made the necessary provisions for any additional costs involved thereby.
- d) requested the CCT to clarify the actual requirements of anything in the Specifications and Price Schedule, the exact meaning or interpretation of which is not clearly intelligible to the Tenderer.
- e) Received any notices to the tender documents which have been issued in accordance with the CCT's Supply Chain Management Policy.

The CCT will therefore not be liable for the payment of any extra costs or claims arising from the submission of the tender.

### **2.2.22 Collection and issuing of tender documents**

The CCT will only issue tender documents through its Tender Distribution Office and/or the official CCT tender portal. Bidders who obtain documents through any means other than described herein, will not be known to the CCT and may thus not receive tender notices and addendums. Tenderers are not allowed to distribute tender documents to other potential bidders.

It is the responsibility of bidders who obtain documents through any means other than described herein, to notify the CCT tender representative thereof that they are participating in the tender. The CCT accepts no liability for any tender notices or addendums not reaching any bidders, who obtained documents through any means other than described herein or who provided incorrect contact details to the CCT.

## **2.3 The CCT's undertakings**

### **2.3.1 Respond to requests from the tenderer**

**2.3.1.1** Unless otherwise stated in the Conditions of Tender, the CCT shall respond to a request for clarification received up to one week (where possible) before the tender closing time stated on the front page of the tender document.

**2.3.1.2** The CCT's duly authorised representative for the purpose of this tender is stated on the General Tender Information page above.

### **2.3.2 Issue Notices**

If necessary, the CCT may issue addenda in writing that may amend or amplify the tender documents to each tenderer during the period from the date the tender documents are available until one week before the tender closing time stated in the Tender Data. The CCT reserves its rights to issue addenda less than one week before the tender closing time in exceptional circumstances. If, as a result a tenderer applies for an extension to the closing time stated on the front page of the tender document, the CCT may grant such extension and, shall then notify all tenderers who drew documents.

Notwithstanding any requests for confirmation of receipt of notices issued, the tenderer shall be deemed to have received such notices if the CCT can show proof of transmission thereof via electronic mail, facsimile or registered post.

### **2.3.3 Opening of tender submissions**

**2.3.3.1** Unless the two-envelope system is to be followed, CCT shall open tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the Conditions of Tender.

Tenders will be opened immediately after the closing time for receipt of tenders as stated on the front page of the tender document, or as stated in any Notice extending the closing date and at the closing venue as stated in the General Tender Information.

**2.3.3.2** Announce at the meeting held immediately after the opening of tender submissions, at the closing venue as stated in the General Tender Information, the name of each tenderer whose tender offer is opened and, where possible, the prices indicated.

**2.3.3.3** Make available a record of the details announced at the tender opening meeting on the CCT's website (<http://www.capetown.gov.za/en/SupplyChainManagement/Pages/default.aspx>.)

### **2.3.4 two-envelope system**

**2.3.4.1** Where stated in the Conditions of Tender that a two-envelope system is to be followed, the CCT shall open only the technical proposal of tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the Conditions of Tender and announce the name of each tenderer whose technical proposal is opened.

**2.3.4.2** The CCT shall evaluate the quality of the technical proposals offered by tenderers, then advise tenderers who have submitted responsive technical proposals of the time and place when the financial proposals will be opened. The CCT shall open only the financial proposals of tenderers, who have submitted responsive technical proposals in accordance with the requirements as stated in the Conditions of Tender, and announce the total price and any preference claimed. Return unopened financial proposals to tenderers whose technical proposals were non responsive.

### **2.3.5 Non-disclosure**

The CCT shall not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

### **2.3.6 Grounds for rejection and disqualification**

The CCT shall determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### **2.3.7 Test for responsiveness**

**2.3.7.1** Appoint a Bid Evaluation Committee and determine after opening whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

**2.3.7.2** A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the CCT's opinion, would:

- a) Detrimentially affect the scope, quality, or performance of the goods, services or supply identified in the Specifications,
- b) Significantly change the CCT's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of any material deviation or qualification.

The CCT reserves the right to accept a tender offer which does not, in the CCT's opinion, materially and/or substantially deviate from the terms, conditions, and specifications of the tender documents.

### **2.3.8 Arithmetical errors, omissions and discrepancies**

**2.3.8.1** Check the responsive tenders for:

- a) The gross misplacement of the decimal point in any unit rate;
- b) Omissions made in completing the Price Schedule; or
- c) Arithmetic errors in:
  - i) line item totals resulting from the product of a unit rate and a quantity in the Price Schedule; or
  - ii) The summation of the prices; or
  - iii) Calculation of individual rates.

**2.3.8.2** The CCT must correct the arithmetical errors in the following manner:

- a) Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.
- b) If pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as tendered shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if Price Schedules apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

**2.3.8.3** In the event of tendered rates or lump sums being declared by the CCT to be unacceptable to it because they are not priced, either excessively low or high, or not in proper balance with other rates or lump sums, the tenderer may be required to produce evidence and advance arguments in support of the tendered rates or lump sums objected to. If, after submission of such evidence and any further evidence requested, the CCT is still not satisfied with the tendered rates or lump sums objected to, it may request the tenderer to amend these rates and lump sums along the lines indicated by it.

The tenderer will then have the option to alter and/or amend the rates and lump sums objected to and such other related amounts as are agreed on by the CCT, but this shall be done without altering the tender offer in accordance with this clause.

Should the tenderer fail to amend his tender in a manner acceptable to and within the time stated by the CCT, the CCT may declare the tender as non-responsive.

### **2.3.9 Clarification of a tender offer**

The CCT may, after the closing date, request additional information or clarification from tenderers, in writing on any matter affecting the evaluation of the tender offer or that could give rise to ambiguity in a contract arising from the tender offer, which written request and related response shall not change or affect their competitive position or the substance of their offer. Such request may only be made in writing by the Director: Supply Chain Management using any means as appropriate.

### **2.3.10 Evaluation of tender offers**

#### **2.3.10.1 General**

**2.3.10.1.1** The CCT may reduce each responsive tender offer to a comparative price and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the Conditions of Tender.

**2.3.10.1.2** For evaluation purposes only, the effects of the relevant contract price adjustment methods will be considered in the determination of comparative prices as follows:

- a) If the selected method is based on bidders supplying rates or percentages for outer years, comparative prices would be determined over the entire contract period based on such rates or percentages.

- b) If the selected method is based on a formula, indices, coefficients, etc. that is the same for all bidders during the contract period, comparative prices would be the prices as tendered for year one.
- c) If the selected method is based on a formula, indices, coefficients, etc. that varies between bidders, comparative prices would be determined over the entire contract period based on published indices relevant during the 12 months prior to the closing date of tenders.
- d) If the selected method includes an imported content requiring rate of exchange variation, comparative prices would be determined based on the exchange rates tendered for the prices as tendered for year one. The rand equivalent of the applicable currency 14 days prior to the closing date of tender will be used (the CCT will check all quoted rates against those supplied by its own bank).
- e) If the selected method is based on suppliers' price lists, comparative prices would be the prices as tendered for year one.
- f) If the selected method is based on suppliers' price lists and / or rate of exchange, comparative prices would be determined as tendered for year one whilst taking into account the tendered percentage subject to rate of exchange (see sub clause (d) for details on the calculation of the rate of exchange).

**2.3.10.1.3** Where the scoring of functionality forms part of a bid process, each member of the Bid Evaluation Committee must individually score functionality. The individual scores must then be interrogated and calibrated if required where there are significant discrepancies. The individual scores must then be added together and averaged to determine the final score.

### **2.3.10.2 Decimal places**

Score financial offers, preferences and functionality, as relevant, to two decimal places.

### **2.3.10.3 Scoring of work order offers (price and preference) – Secondary Process – For information - Not part of initial evaluation**

**2.3.10.3.1** Points for price will be allocated in accordance with the formula set out in this clause as follows:

Based on the real (unescalated) overall annual savings per a unit of energy using the rates provided by the bidder in the **Price Schedule (Section C.4)** applied to the generation profile provided by the bidder (in schedules E.13-B and E.13-C). The overall savings per a unit energy will be calculated by comparing these costs to the equivalent Benchmark Energy Charges Tariff Stipulated in the Specification (C.5) over the contract durations assuming P90 generation probabilities.

*Overall Real Savings Per unit Energy*

$$= \frac{\sum_{j=1}^{j=CT} \text{HourlyGeneration}_j \left( (\text{BenchmarkTOU}_j - \text{BidderTOU}_j) - (\text{BenchmarkTOU}_j - \text{Wheeling Credit Rate}_j) \right)}{\sum_{j=1}^{j=CT} \text{HourlyGeneration}_j}$$

Where:  $j \equiv$  hour of year;

*HourlyGeneration*  $\equiv$  MWh delivered over hour  $j$  at probability P90;

*CT*  $\equiv$  For every hour over the Work Package Term;

*BenchmarkTOU*  $\equiv$  Benchmark rate for the ToU period applicable to hour  $j$ , These rates will be the applicable energy reference prices for the 1<sup>st</sup> year of the Work Package as stipulated in the works order and not be escalated by CPI or other assumption over the contract period and are therefore assumed to remain the same in real terms for evaluation purposes;

*Bidder*  $\equiv$  Bidder rate for the ToU period applicable to hour  $j$ ; as defined by the Price Schedule C.4. This rate will not be escalated by CPI or other assumption over the contract period and is therefore assumed to remain the same in real terms for evaluation purposes. The bidder may however choose to reflect real changes in price due to, for example, an anticipated change in supply profile over the contract period;

*Wheeling Credit Rate*  $\equiv$  The rate at which wheeled energy is credited on the local authority bulk account at the designated POD. This is currently the 'WEPS Local Authority Active energy charge excluding losses and portion of Generation Capacity Charge' [c/kWh] as published in the Eskom tariff and charges booklet 2025/26; (*BenchmarkTOU<sub>j</sub>* - WEPS minus losses) = 0 for generators embedded in the CCT network;

The applicable TOU period structure in terms of hours, seasons and the corresponding rates will be that of the appropriate reference prices for wholesale energy for local authorities at the time of the works order. The currently applicable TOU (Time of Use periods) are defined as per the latest Eskom Tarriff and Charges Booklet (2025/26).

**2.3.10.3.2** Points for preference will be allocated in accordance with the provisions of **Preference Schedule** and the table in this clause.

**2.3.10.3.3** The terms and conditions of **Preference Schedule** as it relates to preference shall apply in all respects to the tender evaluation process and any subsequent contract.

**2.3.10.3.4** Applicable formula:

The 90/10 price/preference points system will be applied to the evaluation of responsive tenders above a Rand value of R50'000'000 (all applicable taxes included), whereby the order(s) will be placed with the tenderer(s) scoring the highest total number of adjudication points.

Price shall be scored as follows:

$$P_s = 90 \times \left(1 - \frac{(P_t - P_{min})}{P_{min}}\right)$$

Where: Ps is the number of points scored for price;  
Pt is the price of the tender under consideration;  
Pmin is the price of the lowest responsive tender.

Preference points shall be based on the Specific Goal as per below:

**Table B2: Awards above R50 mil (VAT Inclusive)**

#	Specific goals allocated points	Preference Points (90/10) <i>Above R50 mil</i>	Evidence	Additional Guidance
<i>Persons, or categories of persons, historically disadvantaged- (HDI) by unfair discrimination on the basis of</i>				
1	<b>Gender are women (ownership)*</b>  >75% - 100% women ownership: 3 points >50% - 75% women ownership: 2 points >25% - 50% women ownership: 1 point >0% - 25% women ownership: 0.5 point 0% women ownership = 0 points	3	<ul style="list-style-type: none"> <li>Company Registration Certification</li> <li>Central Supplier Database report</li> </ul>	<ul style="list-style-type: none"> <li>Issued by the Companies and Intellectual Property Commission</li> <li>Report name: CSD Registration report</li> </ul>
2	<b>Race are black persons (ownership)*</b>  >75% - 100% black ownership: 3 points >50% - 75% black ownership: 2 points >25% - 50% black ownership: 1 point >0% - 25% black ownership: 0.5 point 0% black ownership = 0 points	3	<ul style="list-style-type: none"> <li>B-BBEE certificate;</li> <li>Company Registration Certification</li> <li>Central Supplier Database report</li> </ul>	<ul style="list-style-type: none"> <li>South African National Accreditation System approved certificate or commissioned sworn affidavit</li> <li>Issued by the Companies and Intellectual Property Commission</li> <li>Report name: CSD Registration report</li> </ul>
3	<b>Disability are disabled persons (ownership)*</b>  <i>WHO disability guideline</i> >2% ownership: 1 points >0% - 2% ownership: 0.5 point 0% ownership = 0 point	1	<ul style="list-style-type: none"> <li>Proof of disability</li> <li>Company Registration Certification</li> </ul>	<ul style="list-style-type: none"> <li>Medical certificate/ South African Revenue Services disability registration</li> <li>Issued by the Companies and Intellectual Property Commission</li> </ul>
<i>Reconstruction and Development Programme (RDP) as published in Government Gazette</i>				
4	<b>Promotion of Micro and Small Enterprises</b>	3	<ul style="list-style-type: none"> <li>B-BBEE status level of contributor;</li> </ul>	<ul style="list-style-type: none"> <li>Specifically in line with the respective sector codes which the company operates,</li> </ul>

<p><i>Micro with a turnover up to R20million and Small with a turnover up to R80 million as per National Small Enterprise Act, 1996 (Act No.102 of 1996)</i></p> <p><i>SME partnership, sub-contracting, joint venture or consortiums</i></p>			<ul style="list-style-type: none"> <li>• South African National Accreditation System approved certificate or commissioned sworn affidavit</li> </ul>
		<ul style="list-style-type: none"> <li>• South African owned enterprises;</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of incorporation or commissioned sworn affidavit</li> </ul>
		<ul style="list-style-type: none"> <li>• Financial Statement to determine annual turnover</li> </ul>	<ul style="list-style-type: none"> <li>• Latest financial statements (1 Year)</li> </ul>
<b>Total points</b>	<b>10</b>		

*\*Ownership: main tendering entity*

#### **2.3.10.5 Risk Analysis**

Notwithstanding compliance with regard to any requirements of the tender, the CCT will perform a risk analysis in respect of the following:

- a) reasonableness of the financial offer
- b) reasonableness of unit rates and prices
- c) the tenderer's ability to fulfil its obligations in terms of the tender document, that is, that the tenderer can demonstrate that he/she possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, capacity, experience, reputation, personnel to perform the contract, etc.; the CCT reserves the right to consider a tenderer's existing contracts with the CCT in this regard
- d) any other matter relating to the submitted bid, the tendering entity, matters of compliance, verification of submitted information and documents, etc.

The conclusions drawn from this risk analysis will be used by the CCT in determining the acceptability of the tender offer.

No tenderer will be recommended for an award unless the tenderer has demonstrated to the satisfaction of the CCT that he/she has the resources and skills required.

#### **2.3.11 Negotiations with preferred tenderers**

The CCT may negotiate the final terms of a contract with tenderers identified through a competitive tendering process as preferred tenderers provided that such negotiation:

- a) Does not allow any preferred tenderer a second or unfair opportunity;
- b) Is not to the detriment of any other tenderer; and
- c) Does not lead to a higher price than the tender as submitted.

If negotiations fail to result in acceptable contract terms, the City Manager (or his delegated authority) may terminate the negotiations and cancel the tender, or invite the next ranked tenderer for negotiations. The original preferred tenderer should be informed of the reasons for termination of the negotiations. If the decision is to invite the next highest ranked tenderer for negotiations, the failed earlier negotiations may not be reopened by the CCT.

Minutes of any such negotiations shall be kept for record purposes.

The provisions of this clause will be equally applicable to any invitation to negotiate with any other tenderers.

In terms of the CCT's SCM Policy, tenders must be cancelled in the event that negotiations fail to achieve a market related price with any of the three highest scoring tenderers.

#### **2.3.12 Acceptance of tender offer**

Notwithstanding any other provisions contained in the tender document, the CCT reserves the right to:

**2.3.12.1** Accept a tender offer(s) which does not, in the CCT's opinion, materially and/or substantially deviate from the terms, conditions, and specifications of the tender document.

**2.3.12.2** Accept the whole tender or part of a tender or any item or part of any item or items from multiple manufacturers, or to accept more than one tender (in the event of a number of items being offered), and the CCT is not obliged to accept the lowest or any tender.

**2.3.12.3** Accept the tender offer(s), if in the opinion of the CCT, it does not present any material risk and only if the tenderer(s):

- a) is not under restrictions, has any principals who are under restrictions, or is not currently a supplier to whom notice has been served for abuse of the supply chain management system, preventing participation in the CCT's procurement,
- b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- c) has the legal capacity to enter into the contract,
- d) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing, complies with the legal requirements, if any, stated in the tender data, and
- e) is able, in the opinion of the CCT, to perform the contract free of conflicts of interest.

If an award cannot be made in terms of anything contained herein, the CCT reserves the right to consider the next ranked tenderer(s).

**2.3.12.4** The CCT reserves the right not to make an award, or revoke an award already made, where the implementation of the contract may result in reputational risk or harm to the CCT as a result of (inter alia):

- a) reports of poor governance or unethical behaviour, or both;
- b) association with known notorious individuals and family of notorious individuals;
- c) poor performance issues, known to the CCT;
- d) negative media reports, including negative social media reports;
- e) adverse assurance (e.g. due diligence) report outcomes; and
- f) circumstances where the relevant vendor has employed, or is directed by, anyone who was previously employed in the service of the state (as defined in clause 1.53 of the SCM Policy), where the person is or was negatively implicated in any SCM irregularity.

**2.3.12.5** The CCT reserves the right to nominate a Standby Bidder at the time when an award is made and in the event that a contract is terminated during the execution thereof, the CCT may consider the award of the contract, or non-award, to the Standby Bidder in terms of the procedures included in its SCM Policy.

### **2.3.13 Prepare contract documents**

**2.3.13.1** If necessary, revise documents that shall form part of the contract and that were issued by the CCT as part of the tender documents to take account of:

- a) Notices issued during the tender period,
- b) Inclusion of some of the returnable documents, and
- c) Other revisions agreed between the CCT and the successful tenderer.

**2.3.13.2 Complete** the schedule of deviations attached to the form of offer and acceptance, if any.

### **2.3.14 Notice to successful and unsuccessful tenderers**

**2.3.14.1** Before accepting the tender of the successful tenderer the CCT shall notify the successful tenderer in writing of the decision of the CCT's Bid Adjudication Committee to award the tender to the successful

tenderer. No rights shall accrue to the successful tenderer in terms of this notice

**2.3.14.2** The CCT shall, at the same time as notifying the successful tenderer of the Bid Adjudication Committee's decision to award the tender to the successful tenderer, also give written notice to the other tenderers informing them that they have been unsuccessful.

**2.3.15 Provide written reasons for actions taken**

Provide upon request written reasons to tenderers for any action that is taken in applying these Conditions of Tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

<b>TENDER DOCUMENT GOODS AND SERVICES</b>		 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD
<b>SUPPLY CHAIN MANAGEMENT</b>		
SCM - 542	Approved by Branch Manager: February 2024	Version: 10   Page 24 of 80

<b>TENDER NO:</b> 156S/2025/26
<b>TENDER DESCRIPTION:</b> PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW
<b>CONTRACT PERIOD:</b> UP TO 180 MONTHS FROM THE COMMENCEMENT DATE OF THE CONTRACT

## THE CONTRACT

<b>THE CITY OF CAPE TOWN</b>	
A metropolitan municipality, established in terms of the Local Government: Municipal Structures Act, 117 of 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended (“the Purchaser”) herein represented by	
<b>AUTHORISED REPRESENTATIVE</b>	

AND

<b>SUPPLIER</b>	
<b>NAME</b> of Company/Close Corporation or Partnership / Joint Venture/ Consortium or Sole Proprietor /Individual (The “Supplier” / “tenderer”)	
<b>TRADING AS</b> (if different from above)	
<b>REGISTRATION NUMBER</b>	
<b>PHYSICAL ADDRESS / CHOSEN DOMICILIUM CITANI ET EXECTUANDI OF THE SUPPLIER</b>	
<b>AUTHORISED REPRESENTATIVE</b>	
<b>CAPACITY OF AUTHORISED REPRESENTATIVE</b>	

(HEREINAFTER COLLECTIVELY REFERRED TO AS “THE PARTIES” AND INDIVIDUALLY A “PARTY”)

<b>NATURE OF TENDER OFFER</b> (please indicate below)	
<b>Main Offer</b> (see clause 2.2.11.1)	
<b>Alternative Offer</b> (see clause 2.2.11.1)	

## C.1 DETAILS OF TENDERER/SUPPLIER

### 1.1 Type of Entity (Please tick one box)

- Individual / Sole Proprietor
  Close Corporation
 Company
- Partnership or Joint Venture or Consortium
  Trust
 Other:

### 1.2 Required Details (Please provide applicable details in full):

<b>Name of Company / Close Corporation or Partnership / Joint Venture / Consortium or Individual /Sole Proprietor</b>	
<b>Trading as</b> (if different from above)	
<b>Company / Close Corporation registration number</b> (if applicable)	
<b>Postal address</b>	Postal Code _____
<b>Physical address</b> (Chosen Domicilium Citandi Et Executandi)	Postal Code _____
<b>Contact details of the person duly authorised to represent the tenderer</b>	Name: Mr/Ms _____ <span style="margin-left: 300px;">(Name &amp; Surname)</span> Telephone :( _____ ) _____ Fax :( _____ ) _____ Cellular Telephone: _____ E-mail address: _____
<b>Income tax number</b>	
<b>VAT registration number</b>	
<b>SARS Tax Compliance Status PIN</b>	
<b>CCT Supplier Database Registration Number</b> (See Conditions of Tender)	
<b>National Treasury Central Supplier Database registration number</b> (See Conditions of Tender)	
<b>Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered?</b>	<input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span> If yes, enclose proof
<b>Is tenderer a foreign based supplier for the Goods / Services / Works offered?</b>	<input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span> If yes, answer the Questionnaire to Bidding Foreign Suppliers (below)
<b>Questionnaire to Bidding Foreign Suppliers</b>	a) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? <input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span>
	b) Does the tenderer have a permanent establishment in the Republic of South Africa? <input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span>
	c) Does the tenderer have any source of income in the Republic of South Africa? <input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span>
	d) Is the tenderer liable in the Republic of South Africa for any form of taxation? <input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span>
<b>Other Required registration numbers</b>	

## C.2 FORM OF OFFER AND ACCEPTANCE

### TENDER: PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/ OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW

#### C.2.1 Offer (To Be Completed by the Tenderer as Part of Tender Submission)

The tenderer, identified in the offer signature table below,

**HEREBY AGREES THAT** by signing the *Form of Offer and Acceptance*, the tenderer:

1. confirms that it has examined the documents listed in the Index (including Schedules and Annexures) and has accepted all the Conditions of Tender;
2. confirms that it has received and incorporated any and all notices issued to tenderers issued by the CCT;
3. confirms that it has satisfied itself as to the correctness and validity of the tender offer; that the price(s) and rate(s) offered cover all the goods and/or services specified in the tender documents; that the price(s) and rate(s) cover all its obligations and accepts that any mistakes regarding price(s), rate(s) and calculations will be at its own risk;
4. offers to supply all or any of the goods and/or render all or any of the services described in the tender document to the CCT in accordance with the:
  - 4.1 terms and conditions stipulated in this tender document;
  - 4.2 specifications stipulated in this tender document; and
  - 4.3 at the prices as set out in the **Price Schedule**.
5. accepts full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on it in terms of the Contract.

SIGNED AT \_\_\_\_\_ (PLACE) ON THE \_\_\_\_\_ (DAY) OF \_\_\_\_\_ (MONTH AND YEAR)

\_\_\_\_\_  
For and on behalf of the Supplier  
(Duly Authorised)  
Name and Surname:

\_\_\_\_\_  
Witness 1 Signature  
Name and Surname:

\_\_\_\_\_  
Witness 2 Signature  
Name and Surname:

INITIALS OF CCT OFFICIALS		
1	2	3

## FORM OF OFFER AND ACCEPTANCE (continued)

### TENDER: PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/ OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW

#### C.2.2 Acceptance (To Be Completed by the CCT)

By signing this part of this *Form of Offer and Acceptance*, the CCT accepts the tenderer's (if awarded the Supplier's) offer. In consideration thereof, the CCT shall pay the Supplier the amount due in accordance with the conditions of contract. Acceptance of the Supplier's offer shall form an agreement between the CCT and the Supplier upon the terms and conditions contained in this document.

The terms of the agreement are contained in the Contract (as defined) including drawings and documents or parts thereof, which may be incorporated by reference.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the *Tender Returnable Documents* as well as any changes to the terms of the offer agreed by the tenderer and the CCT during this process of offer and acceptance, are contained in the *Schedule of Deviations* attached to and forming part of this *Form of Offer and Acceptance*. No amendments to or deviations from said documents are valid unless contained in the *Schedule of Deviations*.

The Supplier shall within 2 (two) weeks after receiving a complete, copy of the Contract, including the *Schedule of Deviations* (if any), contact the CCT to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documents to be provided in terms the *Special Conditions of Contract*. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation / breach of the agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the Commencement Date, being the date upon which the Supplier confirms receipt from the CCT of 1 (one) complete, signed copy of the Contract, including amendments or deviations contained in the *Schedule of Deviations* (if any).

For and on behalf of the City of Cape Town  
(Duly Authorised)  
Name and Surname:

Witness 1 Signature  
Name and Surname:

Witness 2 Signature  
Name and Surname:



**FORM OF OFFER AND ACCEPTANCE (continued)**

**TENDER: PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/ OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW)**

**C.2.4 Confirmation of Receipt (To be Completed by Supplier upon Acceptance)**

The Supplier identified in the offer part of the Contract hereby confirms receipt from the CCT of 1 (one) complete, signed copy of the Contract, including the *Schedule of Deviations* (if any) on:

The..... (Day)

Of..... (Month)

20..... (year)

At..... (Place)

For the Supplier: Signature(s) .....

Name(s) .....

Capacity .....

Signature and name of witness: .....

Signature ..... Name .....

**ONLY TO BE COMPLETED AT ACCEPTANCE STAGE**

**C.3 OCCUPATIONAL HEALTH AND SAFETY AGREEMENT**

**AGREEMENT MADE AND ENTERED INTO BETWEEN THE CCT (HEREINAFTER CALLED THE "CCT")  
AND**

.....  
(Supplier/Mandatory/Company/CC Name)

**IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 AS AMENDED.**

I, ....., representing

....., as an employer in its own right in its own right, do hereby undertake to ensure, as far as is reasonably practicable, that all work will be performed, and all equipment, machinery or plant used in such a manner as to comply with the provisions of the Occupational Health and Safety Act ( hereafter "OHSa") and the Regulations promulgated thereunder.

I furthermore confirm that I am/we are registered with the Compensation Commissioner and that all registration and assessment monies due to the Compensation Commissioner have been fully paid or that I/We are insured with an approved licensed compensation insurer.

COID ACT Registration Number: .....

OR Compensation Insurer: ..... Policy No.: .....

I undertake to appoint, where required, suitable competent persons, in writing, in terms of the requirements of OHSa and the Regulations and to charge him/them with the duty of ensuring that the provisions of OHSa and Regulations as well as the Council's Special Conditions of Contract, Way Leave, Lock-Out and Work Permit Procedures are adhered to as far as reasonably practicable.

I further undertake to ensure that any subcontractors employed by me will enter into an occupational health and safety agreement separately, and that such subcontractors comply with the conditions set.

I hereby declare that I have read and understand the Occupational Health and Safety Specifications contained in this tender and undertake to comply therewith at all times.

I hereby also undertake to comply with the Occupational Health and Safety Specification and Plan submitted and approved in terms thereof.

Signed at .....on the.....day of.....20....

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Mandatory**

Signed at..... on the.....day of.....20 ....

\_\_\_\_\_  
Witness

\_\_\_\_\_  
for and on behalf of  
CCT

## C.4 PRICE SCHEDULE

### C4.1 Pricing Assumptions

Pricing Assumptions mean the criteria as set out in the Framework Contract, read together with all Parts of the framework contract document, which it will be assumed in the Works Order contract, that the bidder had taken into account when developing his prices (rates) for the framework tender.

The Pricing Assumptions below are applicable to the Generation Profile in the Works Order contract documents.

1. The bidders will be requested to submit its half hourly Generation Profile data as well its Commercial Energy Rate
2. The bidders will be required to stipulate the POD
3. The bidders will be required to stipulate whether the energy is wheeled or embedded
4. **No unauthorized amendment shall be made to the Works Order submission or any part of the Pricing Data. If such amendment is made, the offer may be rendered non-responsive.**

The following will be used to rank Panelist on their bids per Works Order:

**THE PRICE SCHEDULE WILL BE REQUESTED FROM THE PANEL WHEN ISSUING A WORK ORDER AT SECONDARY STAGE AND WILL BE USED FOR EVALUATION THEREOF. THIS IS FOR INFORMATION AND BIDDERS SHOULD NOT COMPLETE THIS SECTION.**

The CCT will complete the appropriate calculations to ensure financial and technical benefit to the CCT using the rates provided at the secondary stage. This will be done in conjunction with the proposed generation profiles as per Schedule F.2 and Schedule F.3 respectively (to be provided by Panel bidders at secondary stage); as well as to ensure compliance with C5.4 of the specification.

An illustrative TOU (Time of Use ) rates structure for the currently applicable benchmark rates are shown below as per the latest Eskom Tarriff and Charges Booklet (2025/26). The applicable TOU rates structure will however be that of the appropriate reference prices for wholesale energy for local authorities at the time of the works order.

Rates as at Base Date				
Time of Use Period		Deemed Energy Rate**	Commercial Energy Rate (CER)	Benchmark Energy Rate*
		R/kWh	R/kWh	R/kWh
<b>Low Demand Season</b>	Peak	Per PPA	To be completed at Secondary Stage	To be provided at Secondary Stage
	Standard		To be completed at Secondary Stage	To be provided at Secondary Stage
	Off-Peak		To be completed at Secondary Stage	To be provided at Secondary Stage
<b>High Demand Season</b>	Peak		To be completed at Secondary Stage	To be provided at Secondary Stage
	Standard		To be completed at Secondary Stage	To be provided at Secondary Stage
	Off-Peak		To be completed at Secondary Stage	To be provided at Secondary Stage

\*\* Deemed Energy Rate will only become payable as per the PPA terms.

Points for price will be allocated in accordance with the formula set out in this clause as follows:

Based on the real (unescalated) overall annual savings per a unit of energy using the rates provided by the bidder in the **Price Schedule (Section C.4)** applied to the generation profile provided by the bidder (in schedules E.13-B and E.13-C). The overall savings per a unit energy will be calculated by comparing these costs to the equivalent Benchmark Energy Charges Tariff Stipulated in the Specification (C.5) over the contract duration year assuming P90 generation probabilities.

Overall Real Savings Per unit Energy

$$= \frac{\sum_{j=1}^{CT} \text{HourlyGeneration}_j \left( (\text{BenchmarkTOU}_j - \text{BidderTOU}_j) - (\text{BenchmarkTOU}_j - \text{Wheeling Credit Rate}_j) \right)}{\sum_{j=1}^{CT} \text{HourlyGeneration}_j}$$

Where:  $j \equiv$  hour of year;

HourlyGeneration  $\equiv$  MWh delivered over hour  $j$  at probability P90;

CT  $\equiv$  For every hour over the Contract Term;

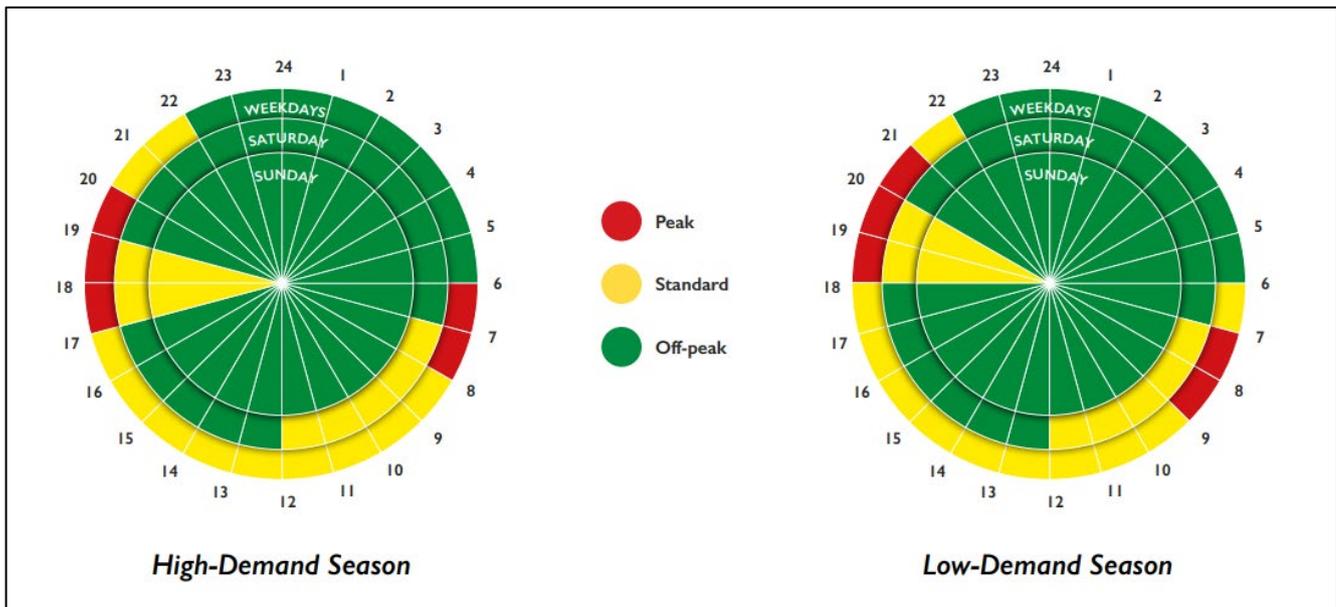
BenchmarkTOU  $\equiv$  Benchmark rate for the ToU period applicable to hour  $j$ . These rates will be the applicable energy reference prices for the 1<sup>st</sup> year of the contract as stipulated in the works order and not be escalated by CPI or other assumption over the contract period and are therefore assumed to remain the same in real terms;

Bidder  $\equiv$  Bidder rate for the ToU period applicable to hour  $j$ ; as defined by the Price Schedule C.4. This rate will not be escalated by CPI or other assumption over the contract period and is therefore assumed to remain the same in real terms. The bidder may however choose to reflect real changes in price due to, for example, an anticipated change in supply profile over the contract period;

Wheeling Credit Rate  $\equiv$  The rate at which wheeled energy is credited on the local authority bulk account at the designated POD. This is currently the 'WEPS Local Authority Active energy charge excluding losses and portion of Generation Capacity Charge' [c/kWh] as published in the Eskom tariff and charges booklet 2025/26;

(BenchmarkTOU <sub>$j$</sub>  - WEPS minus losses <sub>$j$</sub> ) = 0 for generators embedded in the CCT network;

Illustrative TOU (Time of Use ) periods for the currently applicable benchmark rates are shown below as per the latest Eskom Tarriff and Charges Booklet (2025/26). The applicable TOU period structure will however be that of the appropriate reference prices for wholesale energy for local authorities at the time of the works order.



### Pricing Instructions:

- 5.1 State the rates and prices in Rand unless instructed otherwise in the Conditions of Tender.
- 5.2 **Prices provided must include all relevant charges (wheeling/ UoS charges), and any other costs payable by the successful bidder such as duties, taxes (except Value Added Tax (VAT)), RECs registration.**
- 5.3 All prices tendered must include all expenses, disbursements and costs (e.g. transport, accommodation etc.) that may be required for the execution of the tenderer's obligations in terms of the Contract, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Contract as well as overhead charges and profit (in the event that the tender is successful). All prices tendered will be final and binding.
- 5.4 All prices shall be tendered in accordance with the units specified in this schedule.
- 5.5 The successful tenderer is required to perform all tasks listed against each item. The tenderer must therefore tender prices/rates on all items as per the section in the Price Schedule. **An item against which**

**no rate is/are entered, or if anything other than a rate or a nil rate (for example, a zero, a dash or the word “included” or abbreviations thereof) is entered against an item, it will also be regarded as a nil rate having been entered against that item, i.e. that there is no charge for that item. The Tenderer may be requested to clarify nil rates, or items regarded as having nil rates; and the CCT may also perform a risk analysis with regard to the reasonableness of such rates.**

- 5.7 Provide fixed rates and prices for the duration of the contract that are not subject to adjustment except as otherwise provided for in clause 17 of the Conditions of Contract and as amplified in the Special Conditions of Contract.

## C.5 SPECIFICATION(S)

### TENDER: PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/ OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW

#### C5.1 BACKGROUND AND PURPOSE

Loadshedding (instituted intermittently since 2008) and significant increases in bulk electricity costs over the last number of years have had a detrimental effect on both the CCT's economy and its consumers. This has resulted in the CCT committing to enhance energy security through various means, thus the CCT has explored own-build and IPP procurement approaches at various scales.

The CCT intends to further diversify its energy sources through alternative procurement strategies and is therefore pursuing bulk energy procurement through entities with access to several generation sources at a competitive price. It is anticipated that such entities may have a more agile procurement and contracting system allowing for a quicker process to reach delivery of first power.

Tenderers should take note that any adjudication or award processes pursuant to this tender are contingent upon the necessary regulatory conditions being in place to make the generation and sale of energy in terms of the tender lawful, possible and financially viable for the CCT.

Note: appointment to the panel does not guarantee the request or award of work orders (quotes for energy).

#### C5.2 SCOPE

The CCT intends on procuring bulk electrical energy and power from suitable entities; the CCT has identified energy traders and aggregators as the most appropriate market participants to engage with for this purpose. Successful tenderers will be required to enter into a Power Purchase Agreement (PPA) with the CCT with a minimum duration of 1 year up to 10 years. The intention is to award a single or multiple PPAs (and work briefs) under this tender, subject to financial and technical feasibility.

The PPA will articulate the details regarding how the commercial arrangement will be managed, relevant calculations, measurement, roles and responsibilities of each party, penalties, and other conditions.

The financial feasibility hinges on the cost of the supplied energy being lower than the equivalent costs that the CCT incurs from purchasing power from Eskom for the equivalent generation profile over a year.

The assumptions with regard to the relevant Eskom Tariff(s) are stated within the C5.4. All Green attributes shall be transferred to the CCT.

The technical feasibility will be based on the ability for the CCT's network to absorb the offered/ contracted generation throughout the contract term at the specified POD(s).

#### C5.3 FUNCTIONAL AND TECHNICAL CRITERIA

The functional performance requirements herein refers to the offer under consideration, and not the capability of the tenderer as per the evaluation criteria listed under 2.2.1.1.4 of the Conditions of Tender.

Compliance with the functional performance criteria are critical to this tender, and non-compliance will result in bids being non-responsive. Compliance will be assessed against the tenderers submission, in particular Schedule E.13 of the returnable schedules and relates to the following key criteria for each offer:

- (a) Contracted Capacity shall be at minimum of 5 MWac
- (b) The date of first power delivery shall be no longer than 36 months after signing of the PPA
- (c) The tendering entity may procure energy from any sources within South Africa including the South African Wholesale Energy Market, but must be connected to the South African National Grid (by the agreed date of first power)
- (d) The tenderer may not procure energy or power from generating plants that the CCT has an exclusive and/or existing contract with (including existing SSEG plants currently feeding into the CCT network and remunerated at the existing CCT feed-in rates); or is part of an existing tender process.
- (e) At the request of the City, the tenderer may be required to register third-party verified RECs/ Green Attributes, in the name of the CCT, verified and compliant with requirements from the relevant third-party, on their account.

**C5.5 PROJECT DEVELOPMENT AND EXECUTION**

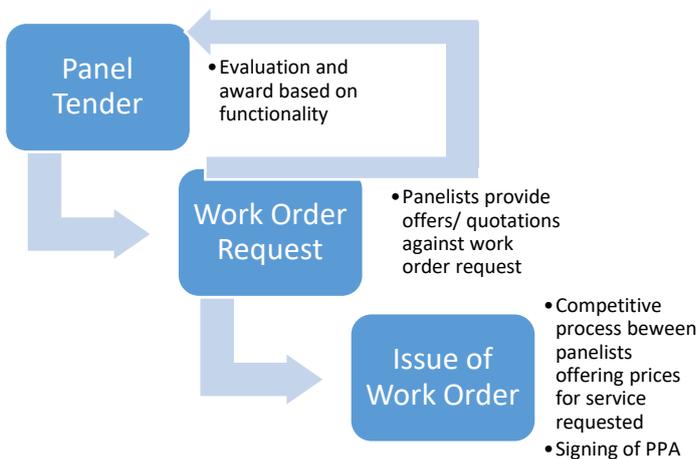
The CCT will have no role in the development of the underlying generation plant as a result of this tender process. Where the tendering entity intends to connect existing plant or develop new plant within the CCT borders or intends connecting to the CCTs electrical network, any permits, applications, land access, etc. will be the responsibility of the successful tenderer. Standard public process will apply and no preference will be afforded to successful tenderers.

**C5.7 SYSTEM OF WORK ORDER AWARDS FROM PANELISTS**

The CCT will invite members on the panel (panelists) to respond to requests for specific energy services termed “work order requests”, these work order requests will generally prescribe parameters such as:

- Contracted capacity
- Duration or end-date
- Latest delivery of first power
- Minimum annual energy

Each work order offer/ proposal by panelists will have to comply with the specification in all respects to be responsive; the offers/ proposals will be tested for compliance with the specification and call for the returnable documents under Annexure F. To clarify the sequence of procurement steps, it shall be as follows:



**C5.8 POWER PURCHASE AGREEMENT (PPA)**

Attached to this tender is the PPA (it must be noted this is a bespoke PPA tailored for the CCT) that will form the basis of the contract.

**[C5.9] TRADE NAMES OR PROPRIETARY PRODUCTS**

Tenderers/Suppliers must note that wherever this document refers to any particular trade mark, name, patent, design, type, specific origin or producer, such reference shall be deemed to be accompanied by the words “or equivalent”.

**[C5.10] EMPLOYMENT OF SECURITY PERSONNEL**

All security staff employed by the Supplier on behalf of the CCT or at any CCT property must be registered with Private Security Industry Regulatory Authority (PSiRA). Proof of such registration must be made available to the CCT or its agent, upon request.

[ ] **FORMS FOR CONTRACT ADMINISTRATION**

The Supplier shall complete, sign and submit with each invoice, the following:

- a) Monthly Project Labour Report (described below)

The Monthly Project Labour Report must include details of all labour (including that of sub-contractors) that are South African citizens earning less than **[R N/A ]** per day, as adjusted from time to time (excluding any benefits), who are employed on a temporary or contract basis on this contract in the month in question.

In addition to the Monthly Project Labour Report the Supplier shall simultaneously furnish the CCT's Agent with copies of the employment contracts entered into with such labour, together with certified copies of identification documents, proof of attendance in the form of attendance register or timesheets as well as evidence of payments to such labour in the form of copies of payslips or payroll runs. If the worker is paid in cash or by cheque, this information must be recorded on the envelope and the worker must acknowledge receipt of payment by signing for it and proof of such acknowledgement shall be furnished to the CCT's Agent.

## C.6 SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract, referring to the National Treasury – Conditions of Contract (revised July 2010), are applicable to this agreement.

### 1. Definitions

*Insert new clause 1.1A with the following:*

- 1.1A “Commencement Date” means the date the Supplier confirms receipt from the Purchaser of 1 (one) complete, signed copy of the Contract, the *Schedule of Deviations* (if any).
- 1.1B “Conditions of Contract” means the general conditions of contract and special conditions of contract including all other contract data incorporated by reference.

*Delete Clause 1.15 and substitute with the following*

- 1.15 The word ‘Goods’ is to be replaced everywhere it occurs in the GCC with the phrase ‘Goods and / or Services’ which means all of the equipment, machinery, materials, services, products, consumables, etc. that the Supplier is required to deliver to the Purchaser under the agreement. This definition shall also be applicable, as the context requires, anywhere where the words “supplies” and “services” occurs in the GCC.

*Delete Clause 1.19 and substitute with the following*

- 1.19 The word ‘Order’ is to be replaced everywhere it occurs in the GCC with the words ‘Purchase Order’ which means the official purchase order authorised and released on the Purchaser’s SAP System.

*Delete Clause 1.21 and substitute with the following:*

- 1.21 ‘Purchaser’ means the City of Cape Town. The address of the Purchaser is 12 Hertzog Boulevard, Cape Town, 8001 (chosen domicilium citandi et executandi).

*Add the following after Clause 1.25:*

- 1.26 ‘Supplier’ means the provider of Goods and / or Services with whom the Contract is concluded also referred to as “contractor” in the GCC.
- 1.27 "Intellectual Property" means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, copyright and rights in the nature of copyright, design rights, rights in databases, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites
- 1.28 “Working Day” means Monday to Friday excluding weekends and Public Holidays (in the Republic of Sotuh Africa).

### 3. General Obligations

*Delete Clause 3.2 in its entirety and replace with the following clauses.*

- 3.2 The Parties will be liable to each other arising out of or in connection with any breach of the obligations detailed or implied in this contract, subject to clause 28.
- 3.3 If the Supplier is a joint venture, all parties in a joint venture or consortium shall be jointly and severally liable to the Purchaser in terms of the Contract and shall carry individually the minimum levels of insurance stated in the Contract, if any.

- 3.4 The Parties shall comply with all laws, regulations and bylaws of local or other authorities having jurisdiction regarding the Delivery of the Goods and/or Services and give all notices and pay all charges required by such authorities.
- 3.4.1 The Parties agree that this Contract shall also be subject to the CCT's Supply Chain Management Policy ("SCM Policy") that was applicable on the date the bid was advertised as amended from time to time. If the Purchaser adopts a new SCM Policy which contemplates that any clause therein would apply to the Contract emanating from this tender, such clause shall also be applicable to the Contract. Please refer to this document contained on the CCT's website.
- 3.4.2 Abuse of the supply chain management system is not permitted and may result in termination of the Contract, restriction of the Supplier, and/or the exercise by the CCT of any other remedies available to it as described in the SCM Policy or in law.
- 3.5 The Supplier shall:
- 3.5.1 Arrange for the documents listed below to be provided to the Purchaser prior to the issuing of the Purchase Order by the Purchaser and no later than the periods as set out in the Contract:
- a) Proof of Insurance (Refer to Clause 11) or Insurance Broker's Warrantee,
  - b) Letter of good standing from the Compensation Commissioner, or a licensed compensation insurer (Refer to Clause 11),
  - c) Initial delivery programme, and
  - d) Other requirements as detailed in the Contract.
- 3.5.2 Only when notified of the acceptance of the bid on the Date of Commencement of Contract, the Supplier shall commence with and carry out the Delivery of the Goods and/or Services in accordance with the Contract, to the satisfaction, of the Purchaser.
- 3.5.3 Provide all of the necessary materials, labour, plant and equipment required for the delivery of the Goods and/or Services including any temporary services that may be required.
- 3.5.4 Insure his workmen and employees against death or injury arising out of the delivery of the Goods.
- 3.5.5 Be continuously represented during the Delivery of the Goods and/or Services by a competent representative duly authorised to execute instructions.
- 3.5.6 In the event of a loss resulting in a claim against the insurance policies stated in clause 11, pay the first amount (excess) as required by the insurance policy.
- 3.5.7 Comply with all written instructions from the Purchaser subject to clause 18.
- 3.5.8 Complete and Deliver the goods within the period stated in clause 10, or any extensions thereof in terms of clause 21.
- 3.5.9 Make good at his own expense, all incomplete and defective Goods during the warranty period.
- 3.5.10 Pay to the Purchaser any penalty for delay as due on demand by the Purchaser. The Supplier hereby consents to such amounts being deducted from any payment due to the Supplier.
- 3.5.11 Comply with the provisions of the OHAS Act & all relevant regulations.
- 3.5.12 Comply with all laws relating to wages and conditions generally governing the employment of labour in the Cape Town area and any applicable Bargaining Council agreements.
- 3.5.13 Deliver the Goods in accordance with the Contract and with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.
- 3.6 The Purchaser shall:
- 3.6.1 Issue Purchaser Orders for the Goods and/or Services required under this Contract. No liability for payment will ensue for arising out of the Delivery of the Goods and/or Services, unless a Purchase Order

has been issued to the Supplier.

- 3.6.2 Make payment to the Supplier for the Goods and/or Services as set out herein.
- 3.6.3 Take possession of the Goods and /or Services upon Delivery by the Supplier.
- 3.6.4 Regularly inspect the Goods to establish that it is being delivered in compliance with the Contract.
- 3.6.5 Give any instructions and/or explanations and/or variations to the Supplier including any relevant advice to assist the Supplier to understand the Contract.
- 3.6.6 Grant or refuse any extension of time requested by the Supplier of the period stated in clause 10.
- 3.6.7 Inspect the Goods and/or Services to determine if, in the opinion of the Purchaser, it has been delivered in compliance with the Contract, alternatively in such a state that it can be properly used for the purpose for which it was intended.
- 3.6.8 Brief the Supplier and issue all documents, information, etc. in accordance with the contract.

**5. Use of contract documents and information; inspection, copyright, confidentiality, etc.**

*Add the following after clause 5.4:*

- 5.5 Copyright of all documents prepared by the Supplier in accordance with the relevant provisions of the Copyright Act (Act 98 of 1978) relating to the Contract shall be vested in the Purchaser. Where copyright is vested in the Supplier, the Purchaser shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the agreement and need not obtain the Supplier's permission to copy it for such use. Where copyright is vested in the Purchaser, the Supplier shall not be liable in any way for the use of any of the information other than as originally intended in terms of the agreement and the Purchaser hereby indemnifies the Supplier against any claim which may be made against it by any person / entity, arising from the use of such documentation for other purposes.

The ownership of data and factual information collected by the Supplier and paid for by the Purchaser shall, after payment, vest with the Purchaser.

- 5.6 **Publicity and publication**  
The Supplier shall not release public or media statements or publish material related to the services or agreement within two (2) years of Delivery of the Goods, without the written approval of the Purchaser, which approval shall not be unreasonably withheld.
- 5.7 **Confidentiality**  
Both Parties shall keep all information obtained by them in the context of the agreement, confidential and shall not divulge it without the written approval of the other Party.
- 5.8 **Intellectual Property**
  - 5.8.1 The Supplier acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the Purchaser.
  - 5.8.2 The Supplier hereby assigns to the Purchaser, all Intellectual Property created, developed or otherwise brought into existence by it for the purposes of the agreement, unless the Parties expressly agree otherwise in writing.
  - 5.8.3 The Supplier shall, and warrants that it shall:
    - 5.8.3.1 Not be entitled to use the Purchaser's Intellectual Property for any purpose other than as contemplated in the agreement;
    - 5.8.3.2 not modify, add to, change or alter the Purchaser's Intellectual Property, or any information or data related thereto, nor may the Supplier produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the Purchaser;

- 5.8.3.3 Not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the Purchser;
- 5.8.3.4 Comply with all reasonable directions or instructions given to it by the Purchaser in relation to the form and manner of use of the CCT Intellectual Property, including without limitation, any brand guidelines which the Purchaser may provide to the Supplier from time to time;
- 5.8.3.5 Ensure that its employees, directors, members and contractors comply strictly with the provisions of this Clause 5.5.8.4 above unless the Purchaser expressly agrees to the contrary, in writing and only after obtaining due internal authority for such agreement.
- 5.8.4 The Supplier represents and warrants to the Purchaser that, in providing Goods and/or Services for the duration of the agreement it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the Purchaser from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the Supplier of any third party's Intellectual Property rights.
- 5.8.5 Upon expiry of the contract period and in the event that the Contract is terminated, ended or is declared void, any and all of the Purchaser's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Purchaser by the Supplier and no copies thereof shall be retained by the Supplier unless the Purchaser expressly and in writing, after obtaining due internal authority, agrees otherwise.

*Add the following after clause 5.8:*

**5.9 Protection of Personal Information Act of 2013**

By submitting a tender to the Purchaser, (and by concluding any ensuing related agreement with the City of Cape Town, if applicable), the Tenderer thereby acknowledges and unconditionally agrees:

- 5.9.1 that the tenderer has been informed of the purpose of the collection and processing of its personal information as defined in the Protection of Personal Information Act of 2013 ("POPIA"), which, for the avoidance of doubt is for, and in relation to, the tender process and the negotiation, conclusion, performance and enforcement of the ensuing agreement, if applicable, as well as for the City of Cape Town's reporting purposes;
- 5.9.2 to the collection and processing of the tenderer's personal information by the City of Cape Town and agrees to make available to the City of Cape Town, all information reasonably required by the City of Cape Town for the above purposes;
- 5.9.3 that the personal information the City of Cape Town collects from the tenderer or about the tenderer may be further processed for other activities and/or purposes which are lawful, reasonable, relevant and not excessive in relation to the purposes set out above, for which it was originally collected;
- 5.9.4 that, the tenderer indemnifies the City of Cape Town and its officials, employees, and directors and undertakes to keep the City of Cape Town and its officials, employees, and directors indemnified in respect of any claim, loss, demands, liability, costs and expenses of whatsoever nature which may be made against the City of Cape Town (including the costs incurred in defending or contesting any such claim) in relation to the tenderer or the tenderer's employees', representatives' and/or sub-Suppliers' non-compliance with POPIA and/or the City of Cape Town's failure to obtain the tenderer's consent or to notify the tenderer of the reason for the processing of the tenderer's personal information;
- 5.9.5 to the disclosure of the tenderer's personal information by the City of Cape Town to any third party, where the City of Cape Town has a legal or contractual obligation to disclose such personal information to the third party (or a legitimate interest exists therein);
- 5.9.6 that, under POPIA, the tenderer may request to access, confirm, request the correction, destruction, or deletion of, or request a description of, personal information held by the City of Cape Town in relation to you, subject to applicable law; and

that under POPIA, subject to applicable law, the tenderer also has the right to be notified of a personal information breach and the right to object to, or restrict, the City of Cape Town's processing of its personal information.

## 5.10 **PERFORMANCE MONITORING**

5.10.1 As required by section 116(2)(b) of the Local Government: Municipal Financial Management Act 56 of 2003, the CCT shall monitor the performance of the Supplier on at least a monthly basis, and the Supplier agrees to provide the CCT with its full cooperation in this regard.

## **7. Performance Security**

*Delete clause 7.1 to 7.4 and replace with the following:*

Not Applicable. Tenderers must disregard the **Pro Forma Performance Security/ Guarantee** and are not required to furnish same.

## **8. Inspections, tests and analyses**

*Delete Clause 8.2 and substitute with the following:*

8.2 If it is a bid condition that Goods and/or Services 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 Supplier shall be open, at all reasonable hours, for inspection by a representative of the Purchaser or an organisation acting on behalf of the Purchaser.

## **10. Delivery and documents**

*Delete clauses 10.1 and 10.2 and replace with the following:*

10.1 Delivery of the goods shall be made by the Supplier in accordance with the terms specified in the contract. The time for Delivery of the goods shall be the date as stated on the Purchase Order. In the case of agreements for Delivery of goods in terms of framework or panel agreements, Purchase Orders for the supply and delivery of goods may be raised up until the expiry of a framework or panel agreement, provided that the goods can be delivered within 30 (thirty) days of expiry of the framework or panel agreement. In this context, the "goods" does not include services and carries its ordinary meaning. All Purchase Orders other than for the supply and Delivery of goods (i.e. supply of services, professional services or constructions works), must be completed prior to the expiry of the contract period.

10.2 The Purchaser shall determine, in its sole discretion, whether the Goods and/or Services have been delivered in compliance with the Contract, alternatively in such a state that it can be properly used for the purpose for which it was intended. When the Purchaser determines that the Goods and/or Services have been satisfactorily delivered, the Purchaser must issue an appropriate certification, or written approval, to that effect. Invoicing may only occur, and must be dated, on or after the date of such written acceptance of the Goods.

## **11. Insurance**

*Add the following after clause 11.1:*

11.2 Without limiting the obligations of the Supplier in terms of this Contract, the Supplier shall effect and maintain the following additional insurances:

11.2.1 Public liability insurances, in the name of the Supplier, covering the Supplier and the Purchaser against liability for the death of or injury to any person, or loss of or damage to any property, arising out of or in the course of this Contract, in an amount not less than **[R20 million]** for any single claim;

11.2.2 Motor Vehicle Liability Insurance, in respect of all vehicles owned and / or leased by the Supplier, comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity;

11.2.3 Registration / insurance in terms of the Compensation for Occupational Injuries and Disease Act, Act 130 of 1993. This can either take the form of a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the Supplier's broker or the insurance company itself (see the Pro Forma Insurance Broker's Warranty).

- [11.2.4 In the case of Contracts for delivery of professional services, Professional indemnity insurance providing cover in an amount of not less than [N/A] in respect of each and every claim during the contract period.]
- 11.2.5 In the event of under insurance or the insurer’s repudiation of any claim for whatever reason, the Purchaser will retain its right of recourse against the Supplier.
- 11.3 The Supplier shall be obliged to furnish the Purchaser with proof of such insurance as the Purchaser may require from time to time for the duration of this Contract. Evidence that the insurances have been effected in terms of this clause, shall be either in the form of an insurance broker’s warranty worded precisely as per the pro forma version contained in the Pro forma Insurance Broker’s Warranty or copies of the insurance policies.

**15. Warranty**

*Add to Clause 15.2:*

- 15.2 The warranty for this Contract shall remain valid for six (6) months from date of Delivery of the Goods and/or Services.

**16. Payment**

*Delete Clause 16.1 in its entirety and replace with the following:*

- 16.1 Payment of invoices will be made:

16.1.1 Within 30 (thirty) days of receiving the relevant invoice or statement from the Supplier, unless otherwise prescribed for certain categories of expenditure or specific contractual requirements in accordance with any other applicable policies of the Purchaser.

16.1.2 Notwithstanding anything contained above, the Purchaser shall not be liable for payment of any invoice that pre-dates the date of delivery of any Goods and/or Services.

*Delete Clause 16.2 in its entirety and replace with the following:*

- 16.2 The Supplier shall furnish the purchaser’s Accounts Payable Department with an original tax invoice, clearly showing the amount due in respect of each and every claim for payment.

*Add the following after clause 16.4*

16.5 Notwithstanding any amount stated on the Purchase Order, the Supplier shall only be entitled to payment for Goods and/or Services actually delivered in terms of the Specification and Drawings, or any variations thereof made in accordance with clause 18. Any contingency sum included shall be for the sole use, and at the discretion, of the Purchaser.

16.6 The Purchaser will only make advanced payments to the Supplier in strict compliance with the terms and conditions as contained in the Pro forma Advanced Payment Guarantee and only once the authenticity of such guarantee has been verified by the Purchaser’s Treasury Department.

- 16.6.1 The Advance Payment Schedule applicable to this Contract is set out below. The items of plant and materials which have been identified by the Purchaser as being suitable for advance payment in terms of this Contract are listed in the table below, and for which the Purchaser is prepared to make advance payment to the Supplier, subject to the conditions below. Should an item or items be added to the list at tender stage by a tenderer, no obligation to advance payment shall be incurred by the Purchaser, for such items added by the tenderer except as provided for herein.

Plant and materials which have been manufactured and are stored by the supplier	Plant and materials yet to be manufactured and for which a deposit with order is required from the supplier by a third party manufacturer/supplier, and which may be stored by the supplier:
N/A	

- 16.6.2 The Supplier can only rely on advance payment being permitted by the Purchaser in respect of the plant and materials listed in the table above. The Purchaser may, however, permit advance payment for other plant and materials in exceptional circumstances and at its sole discretion, during the course of the Contract, and upon reasonable request from the Supplier.
- 16.6.3 Advance payment for the purposes of deposits will only be provided up to a limit of [N/A] of the value of any one item being claimed.
- 16.6.4 The Supplier shall provide the Purchaser with documentary evidence of the terms and conditions for which a deposit with order is required by a third party manufacturer/supplier, together with the advance payment guarantee.
- 16.6.5 The Supplier will also be permitted to obtain advance payment for the balance of the value of the plant and materials in respect of which he has paid a deposit, for an item which after manufacture is stored by the Supplier. The Supplier shall, in respect of such payment, provide an advance payment guarantee, either for such balance or, if the advance payment guarantee in respect of the deposit is to be returned by the Purchaser upon request, for the whole value of the item.

## 17. Prices

*Add the following after clause 17.1*

- 17.2 If as a result of an award of a contract beyond the original tender validity period, the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then the contract may be subject to contract price adjustment for that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Purchaser delegated authority if such was not included in the bid documents.
- 17.3 If as a result of any extension of time granted, the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then contract price adjustment may apply to that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Director: Supply Chain Management if such was not included in the bid documents.
- 17.4 The prices for the goods and/or Services delivered and services performed shall be subject to contract price adjustment in terms of Schedule E.1 Contract Price Adjustment.

## 18. Contract Amendments

*Delete the heading of clause 18 and replace with the following:*

### **18. Contract Amendments and Variations**

*Add the following to clause 18.1:*

Variations means changes to the Goods and/or Services, extension of the contract period or increases in the value of the Contract as a result of written instructions issued by the Purchaser to the Supplier. Such changes are subject to prior approval by the Purchaser's delegated authority. Should the Supplier deliver any Goods not described in a written instruction from the Purchaser, the Purchaser's liability for payment shall no arise until such time as the change has been duly approved and such approval communicated to the Purchaser.

## 20. Subcontracts

*Add the following after clause 20.1:*

- 20.2 The Supplier shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the Supplier.
- 20.3 Any appointment of a subcontractor shall not amount to a contract between the Purchaser and the subcontractor, or a responsibility or liability on the part of the Purchaser to the subcontractor and shall not relieve the Supplier from any liability or obligation under the Contract.

## 21. Delays in the supplier's performance

*Delete Clause 21.2 in its entirety and replace with the following:*

- 21.2 If at any time during the performance of obligations contained in the Contract the Supplier or its subcontractors should encounter conditions beyond their reasonable control which impede the timely delivery of the Goods and/or Services, the Supplier shall notify the Purchaser in writing, within 7 (seven) days of first having become aware of these conditions, of the facts of the delay, its cause(s) and its probable duration. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation, and may at his discretion extend the time for Delivery.

Where additional time is granted, the Purchaser shall also determine whether or not the Supplier is entitled to payment for additional costs in respect thereof. The principle to be applied in this regard is that where the Purchaser or any of its agents are responsible for the delay, reasonable costs shall be paid. In respect of delays that were beyond the reasonable control of both the Supplier and the Purchaser, additional time only (no costs) will be granted.

The Purchaser shall notify the Supplier in writing of his decision(s) in the above regard.

- 21.3 No provision in this Contract shall be deemed to prohibit the obtaining of Goods and/or Services from a national department, provincial department, or a local authority.

## 22. Penalties

*Delete clause 22.1 and replace with the following:*

- 22.1 Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the Goods and/or Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from amounts payable, as a penalty, a sum as stated herein for each day of the delay until actual Delivery or performance.

The penalty for this contract shall be **[as per the PPA]**

- 22.2 The Purchaser shall, without prejudice to its other remedies under the contract, deduct from amounts payable, financial penalties as contained on the Preference Schedule for breaches of the conditions upon which preference points were awarded.

## 23. Termination

Termination for this contract shall be **[as per the PPA]**

*Add the following to the end of clause 23.1:*

If the Supplier fails to remedy the breach in terms of such notice.

*Add the following after clause 23.7:*

- 23.8 In addition to the grounds for termination due to default by the Supplier, the Contract may also be terminated:
- 23.8.1 Upon the death of the Supplier who was a Sole Proprietor, or a sole member of a Close Corporation, in

which case the contract will terminate forthwith.

23.8.2 If the Parties, by mutual agreement, terminate the Contract.

23.8.3 If a material irregularity vitiates the procurement process leading to the conclusion of the Contract, rendering the procurement process and the conclusion of the resulting Contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective the Contract may be terminated by the Purchaser (upon conclusion of applicable processes by the City Manager as described in the Purchaser's SCM Policy).

23.8.4 Reputational risk or harm to the Purchaser

The Purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, may terminate the contract if the implementation of the contract may result in reputational risk or harm to the Purchaser as a result of (inter alia):

- a) reports of poor governance and/or unethical behaviour;
- b) association with known notorious individuals and family of notorious individuals;
- c) poor performance issues, known to the Purchaser
- d) negative social media reports;
- e) adverse assurance (e.g. due diligence) report outcomes; or
- f) circumstances where the relevant vendor has employed, or is directed by, anyone who was previously employed in the service of the state (as defined in clause 1.53), where the person is or was negatively implicated in any SCM irregularity.

By or in relation to the Supplier, the Contract may be terminated by the Purchaser after providing notice to the Supplier.

23.9 If the Contract is terminated in terms of clause 23.8, all obligations that were due and enforceable prior to the date of the termination, must be performed by the relevant Party.

## 26. Termination for insolvency

*Delete clause 26.1 and replace with the following:*

- 26.1 In the event of the Supplier becoming bankrupt or otherwise insolvent the Purchaser may elect to:
- 26.1.1 At any time, terminate the Contract by giving written notice to the Supplier; or
- 26.1.2 Accept a Supplier's proposal (via the liquidator) to render delivery utilising the appropriate contractual mechanisms or takes steps to ensure its rights are protected and any negative impact on service delivery is mitigated.
- 26.2 In the event of the Purchaser electing to cancel the Contract in accordance with clause 26.1.1 above, the Purchaser shall make payment of all verified and signed off invoices. In the event of there being any dispute in respect of any outstanding invoices such dispute shall be dealt with in accordance with the dispute resolution mechanism in the Contract.

## 27. Settlement of Disputes

*Amend clause 27.1 as follows:*

- 27.1 If any dispute or difference of any kind whatsoever, with the exception of termination in terms of clause 23 arises between the Purchaser and the Supplier in connection with or arising out of the Contract, the Parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.

*Delete Clause 27.2 in its entirety and replace with the following:*

- 27.2 Should the Parties fail to resolve any dispute by way of mutual consultation, either party shall be entitled to refer the matter for mediation before an independent and impartial person appointed by the City Manager in accordance with Regulation 50(1) of the Local Government: Municipal Finance Management Act, 56 of 2003 – Municipal Supply Chain Management Regulations (Notice 868 of 2005). Such referral shall be done by either party giving written notice to the other of its intention to commence with mediation. No mediation may be commenced unless such notice is given to the other party.

Irrespective whether the mediation resolves the dispute, the Parties shall bear their own costs concerning the mediation and share the costs of the mediator and related costs equally.

The mediator shall agree the procedures, representation and dates for the mediation process with the Parties. The mediator may meet the Parties together or individually to enable a settlement.

Where the Parties reach settlement of the dispute or any part thereof, the mediator shall record such agreement and on signing thereof by the Parties the agreement shall be final and binding.

Save for reference to any portion of any settlement or decision which has been agreed to be final and binding on the Parties, no reference shall be made by or on behalf of either party in any subsequent court proceedings, to any outcome of an amicable settlement by mutual consultation, or the fact that any particular evidence was given, or to any submission, statement or admission made in the course of amicable settlement by mutual consultation or mediation.

## 28. Limitation of Liability

*Delete clause 28.1 (a) and (b) and replace with the following:*

- (a) notwithstanding any provision to the contrary contained in this contract, neither the supplier nor any of its officers, directors, employees, agents contractors, consultants or other representatives shall be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect, incidental, special or consequential loss or damage of any kind, including without limitation the loss of use, loss of production, or loss of profits or interest costs, loss of goodwill, lost or damaged data or software, costs of substitute products/services and/or loss of business or business opportunities (whether foreseeable or unforeseeable), provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser;
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the sums insured in terms of clause 11 in respect of insurable events, or where no such amounts are stated, to an amount equal to twice the Contract price, provided

that this limitation shall not apply to the cost of repairing or replacing defective equipment.

*Add the following after clause 28.1:*

28.2 Without detracting from, and in addition to, any of the other indemnities in this Contract, the Supplier shall be solely liable for and hereby indemnifies and holds harmless the Purchaser against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with:

- a) personal injury or loss of life to any individual;
- b) loss of or damage to property;

arising from, out of, or in connection with the performance by the Supplier in terms of this Contract, save to the extent caused by the gross negligence or wilful misconduct of the Purchaser.

28.3 The Supplier and/or its employees, agents, concessionaires, suppliers, sub-contractors or customers shall not have any claim of any nature against the purchaser for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether or not such loss, damages, injury or death is caused through negligence of the Purchaser or its agents or employees.

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

28.5 Each party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amounts payable.

### **31. Notices**

*Delete clauses 31.1 and 31.2 and replace with the following:*

31.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses specified in the Contract and may be given as set out hereunder and shall be deemed to have been received when:

- a) hand delivered – on the day delivery of delivery or the next Working Day,
- b) sent by registered mail – five (5) Working Days after mailing,
- c) sent by email or telefax – one (1) Working Day after transmission.

### **32. Taxes and Duties**

*Delete the final sentence of 32.3 and replace with the following:*

. In this regard, it is the responsibility of the Tenderer to submit evidence in the form of a valid Tax Compliance Status PIN issued by SARS to the CCT at the Supplier Management Unit located within the Supplier Management / Registration Office, 2nd Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5), or included with this tender.

*Add the following after clause 32.3:*

32.4 The VAT registration number of the CCT is 4500193497.

**ADDITIONAL CONDITIONS OF CONTRACT**

*Add the following Clause after Clause 34:*

**35. Reporting Obligations**

35.1 The Supplier shall complete, sign and submit with each delivery note, all the documents as required in the Specifications including Monthly Project Labour Reports (Annexure B). Any failure in this regard may result in a delay in the processing of payments.

**36. Conflict between tender special conditions and general contract conditions and PPA**

In the event of any contradiction, discrepancy, ambiguity, or inconsistency between the special and/or general conditions of tender stated herein and the PPA, the provisions of the PPA will take precedence.

**37. Negotiability of the PPA**

The PPA, annexed to this tender document, will be binding, subject to negotiation as per Clause 2.3.11 of the Conditions of Tender.

## C.7 GENERAL CONDITIONS OF CONTRACT

(National Treasury - General Conditions of Contract (revised July 2010))

### TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

### 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 or her 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 in which an enterprise abroad is subsidised 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 recognised 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 with 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 consignee's store or to his site' means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract 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 markets its goods on its own initiative in the RSA at lower prices than that of the country of origin, and which action has the potential to harm the local industries in the RSA.
- 1.12 'Force majeure' means an event beyond the control of the supplier, not involving the supplier's fault or negligence, and not foreseeable. Such events may include, but are not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 '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 organisation purchasing the goods.
- 1.22 'Republic' means the Republic of South Africa.
- 1.23 'SCC' means the Special Conditions of Contract.

1.24 'Services' means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance, and other such obligations of the supplier covered under the contract.

1.25 'Written' or 'in writing' means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders, including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

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

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za).

## **4. Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

## **5. Use of contract documents and information; inspection.**

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for the purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1, except for purposes of performing the contract.

5.3 Any document, other than the contract itself, mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from the use of the goods or any part thereof by the purchaser.

## **7. Performance Security**

7.1 Within 30 (thirty) 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 the 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.
- 1.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser, and shall be in one of the following forms:
- a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - b) A cashier's or certified cheque.
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than 30 (thirty) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in the SCC.

## 8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organisation acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention of such 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 analysed 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 the 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 the 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 the SCC.

10.2 Documents to be submitted by the supplier are specified in the SCC.

## 11. Insurance

11.1 The goods supplied under the contract shall be fully insured, in a freely convertible currency, against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

## 12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

## 13. Incidental Services

13.1 The supplier may be required to provide any or all of the following services, including additional services (if any) specified in the SCC:

- (a) performance or supervision of on-site assembly, and/or commissioning of the supplied goods;
- (b) furnishing of tools required for the assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the Parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the supplier for similar services.

## 14. Spare parts

14.1 As specified in the SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## 15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications), or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for 12 (twelve) 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 18 (eighteen) 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 the SCC.

15.3 The purchaser shall notify the supplier promptly, in writing, of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in the 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 the 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 the SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of any other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than 30 (thirty) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in the 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 tendered by the supplier in his bid, with the exception of any price adjustments authorized in the SCC or in the purchaser's request for bid validity extension, as the case may be.

## **18. Contract Amendments**

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the Parties concerned.

## **19. Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

## **20. Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## **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 the 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 or her 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 of supplies; or to have minor essential services executed if an emergency arises, or 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 cancelling 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 14 (fourteen) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated 14 (fourteen) 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 5 (five) 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, Act 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 of not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction, and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

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

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidised 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 or she 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 or her.

#### **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 notify the purchaser promptly, in writing, of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

#### **26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

#### **27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the Parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.
- 27.2 If, after 30 (thirty) 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 to the supplier.

## **28. Limitation of Liability**

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

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## **29. Governing language**

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the Parties shall also be written in English.

## **30. Applicable Law**

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

## **31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail, and any other notice to him shall be posted by ordinary mail, to the address furnished in his bid or to the address notified later by him in writing; and such posting shall be deemed to be proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

## **32. Taxes and Duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, licence 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, Act 89 of 1998, as amended, an agreement between or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between Parties in a horizontal relationship and if a bidder(s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).

- 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, Act 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 10 (ten) years and/or claim damages from the bidder(s) or contractor(s) concerned.

**C.8 ANNEXURES**

**Annexure A – Pro Forma Insurance Broker’s Warranty**



*Letterhead of supplier’s Insurance Broker*

Date \_\_\_\_\_

CCT  
City Manager  
Civic Centre  
12 Hertzog Boulevard  
Cape Town  
8000

Dear Sir

**TENDER NO.:** 2023/24

**TENDER DESCRIPTION:**

**NAME OF SUPPLIER:** \_\_\_\_\_

*I, the undersigned, do hereby confirm and warrant that all the insurances required in terms of the abovementioned contract have been issued and/or in the case of blanket/umbrella policies, have been endorsed to reflect the interests of the CCT with regard to the abovementioned contract, and that all the insurances and endorsements, etc., are all in accordance with the requirements of the contract.*

*I furthermore confirm that all premiums in the above regard have been paid.*

*Yours faithfully*

Signed: \_\_\_\_\_

For: \_\_\_\_\_ (Supplier’s Insurance Broker)

# Annexure B – Monthly Project Labour Report

## ANNEX 1

### CITY OF CAPE TOWN MONTHLY PROJECT LABOUR REPORT



#### Instructions for completing and submitting forms

##### General

- 1 The Monthly Project Labour Reports must be completed in full, using typed, proper case characters; alternatively, should a computer not be available, handwritten in black ink.
- 2 Incomplete / incorrect / illegible forms will not be accepted.
- 3 Any conditions relating to targeted labour stipulated in the Contract (in the case of contracted out services or works) shall apply to the completion and submission of these forms.
- 4 This document is available in Microsoft Excel format upon request from the City's EPWP office, tel 021 400 9406, email EPWPLR@capetown.gov.za.

##### Project Details

- 5 If a field is not applicable insert the letters: NA
- 6 Only the Project Number supplied by the Corporate EPWP Office must be inserted. The Project Number can be obtained from the Coordinator or Project Manager or from the e-mail address in point 4 above.
- 7 On completion of the contract or works project the anticipated end date must be updated to reflect the actual end date.

##### Beneficiary Details and Work Information

- 8 Care must be taken to ensure that beneficiary details correspond accurately with the beneficiary's ID document.

- 9 A new beneficiary is one in respect of which a new employment contract is signed in the current month. A certified ID copy must accompany this labour report on submission.
  - 10 Was the beneficiary sourced from the City's job seeker database?
  - 11 The contract end date as stated in the beneficiary's employment contract.
  - 12 Where a beneficiary has not worked in a particular month, the beneficiary's name shall not be reflected on this form at all for the month in question.
  - 13 Training will be recorded separately from normal working days and together shall not exceed the maximum of 23 days per month
  - 14 Workers earning more than the maximum daily rate (currently R450 excluding any benefits) shall not be reflected on this form at all.
- ##### Submission of Forms
- 15 Signed hardcopy forms must be scanned and submitted to the City's project manager in electronic (.pdf) format, together with the completed form in Microsoft Excel format.
  - 16 Scanned copies of all applicable supporting documentation must be submitted along with each monthly project labour report. Copies of employment contracts and ID documents are only required in respect of new beneficiaries.
  - 17 If a computer is not available hardcopy forms and supporting documentation will be accepted.

#### PROJECT DETAILS

Numbers in cells below e.g (6) refer to the relevant instruction above for completing and submitting forms

CONTRACT OR WORKS PROJECT NAME: (6)		EPWP SUPPLIED PROJECT NUMBER: (6)										
DIRECTORATE:		DEPARTMENT:										
CONTRACTOR OR VENDOR NAME:		CONTRACTOR OR VENDOR E-MAIL ADDRESS:										
CONTRACTOR OR VENDOR CONTACT PERSON:		CONTRACTOR OR VENDOR TEL. NUMBER:										
CELL WORK												
PROJECT LABOUR REPORT CURRENT MONTH (mark with "X")												
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YEAR

ACTUAL START DATE (yyyy/mm/dd)						ANTICIPATED / ACTUAL END DATE (yyyy/mm/dd) (7)					
TOTAL PROJECT EXPENDITURE / VALUE OF WORK DONE TO-DATE (INCLUDING ALL COSTS, BUT EXCLUDING VAT)											
R											

**MONTHLY PROJECT LABOUR REPORT**



**BENEFICIARY DETAILS AND WORK INFORMATION**

<b>CONTRACT OR WORKS PROJECT NUMBER:</b>
--

<b>Year</b>	<b>Month</b>

<b>Sheet</b>		
1	of	

	(8)	(8)	(8)	(9)			(10)		(11)	(12)	(13)	(14)
No.	First name	Surname	ID number	New Beneficiary (Y/N)	Gender (M/F)	Disabled (Y/N)	Job seeker database (Y/N)	Contract start date (DDMMYY)	Contract end date (DDMMYY)	No. days worked this month (excl. training)	Training days	Rate of pay per day (R - c)
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												

0 0 R -

Declared by Contractor or Vendor to be true and correct:	Name	Signature
	Date	

Received by Employer's Agent / Representative:	Name	Signature
	Date	

# Annexure C - Pro Forma Performance Security/ Guarantee

## GUARANTEE PERFORMANCE SECURITY

### GUARANTOR DETAILS AND DEFINITIONS

"Guarantor" means: .....

Physical address of Guarantor: .....

"Supplier" means: .....

"Contract Sum" means: The accepted tender amount (INCLUSIVE OF VAT) of R .....

Amount in words: .....

"Guaranteed Sum" means: The maximum amount of R.....

Amount in words: .....

"Contract" means: The agreement made in terms of the Form of Offer and Acceptance for tender no ...and such amendments or additions to the contract as may be agreed in writing between the Parties.

### PERFORMANCE GUARANTEE

1. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum.
2. The Guarantor's period of liability shall be from and including the date of issue of this Guarantee/Performance Security up to and including the termination of the Contract or the date of payment in full of the Guaranteed Sum, whichever occurs first.
3. The Guarantor hereby acknowledges that:
  - 3.1 any reference in this Guarantee/Performance to "Contract" is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship;
  - 3.2 Its obligation under this Guarantee/Performance Security is restricted to the payment of money.
4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the CCT the sum due and payable upon receipt of the documents identified in 4.1 to 4.2:
  - 4.1 A copy of a first written demand issued by the CCT to the Supplier stating that payment of a sum which is due and payable has not been made by the Supplier in terms of the Contract and failing such payment within seven (7) calendar days, the CCT intends to call upon the Guarantor to make payment in terms of 4.2;
  - 4.2 A first written demand issued by the CCT to the Guarantor at the Guarantor's physical address with a copy to the Supplier stating that a period of seven (7) days has elapsed since the first written demand in terms of 4.1 and the sum has still not been paid.
5. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the CCT the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the CCT to the Guarantor at the Guarantor's physical address calling up this Guarantee / Performance Security, such demand stating that:
  - 5.1 The Contract has been terminated due to the Supplier's default and that this Guarantee/Performance Security is called up in terms of 5; or
  - 5.2 a provisional or final sequestration or liquidation court order has been granted against the Supplier and that the Guarantee/Performance Guarantee is called up in terms of 5; and

- 5.3 *The aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.*
- 6. *It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.*
- 7. *Where the Guarantor has made payment in terms of 5, the CCT shall upon the termination date of the Contract, submit an expense account to the Guarantor showing how all monies received in terms of this Guarantee/Performance Security have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Guarantee/Performance Security shall bear interest at the prime overdraft rate of the CCT's bank compounded monthly and calculated from the date payment was made by the Guarantor to the CCT until the date of refund.*
- 8. *Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.*
- 9. *The CCT shall have the absolute right to arrange its affairs with the Supplier in any manner which the CCT may deem fit and the Guarantor shall not have the right to claim his release from this Guarantee /Performance Security on account of any conduct alleged to be prejudicial to the Guarantor.*
- 10. *The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.*
- 11. *This Guarantee/Performance Security is neither negotiable nor transferable and shall expire in terms of 2, where after no claims will be considered by the Guarantor. The original of this Guarantee / Performance Security shall be returned to the Guarantor after it has expired.*
- 12. *This Guarantee/Performance Security, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.*
- 13. *Where this Guarantee/Performance Security is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.*

Signed at .....

Date .....

Guarantor's signatory (1) .....

Capacity .....

Guarantor's signatory (2) .....

Capacity .....

Witness signatory (1) .....

Witness signatory (2) .....

**Annexure D - Pro Forma Advance Payment Guarantee**

*Not Applicable*

**Approved Financial Institution as at 13 August 2025:**

**1.1 National Banks**

ABSA Bank Limited  
Firststrand Bank Limited  
Investec Bank Limited  
Nedbank Limited  
Standard Bank of South Africa Limited

**1.2 International Banks (with branches in South Africa)**

Barclays Bank PLC  
Citibank NA  
Credit Agricole Corporate and Investment Bank  
HSBC Bank PLC  
JPMorgan Chase Bank  
Societe Generale  
Standard Chartered Bank

**1.3 Insurance Companies**

American International Group Inc (AIG)  
Bryte Insurance Company Limited  
Coface SA  
Compass Insurance Company Limited  
Credit Guarantee Insurance Corporation of Africa Limited  
Guardrisk Insurance Company Limited  
Hollard Insurance Company Limited  
Infiniti Insurance Limited  
Lombard Insurance Company Limited  
Old Mutual Alternative Risk Transfer Insure Limited (OMART Insure)  
New National Assurance Company Limited  
PSG Konsult Ltd (previously Absa Insurance)  
Regent Insurance Company Limited  
Renasa Insurance Company Limited  
Santam Limited...]

## Annexure E - Tender Returnable Documents

### Schedule E.1: Contract Price Adjustment

The contract price will be adjusted annually in accordance with the change in the Consumer Price Index (CPI), as published by Statistics South Africa. The adjustment shall take place on each anniversary of the base date specified in this contract and will reflect the percentage change in the CPI over the preceding 12 months.

**The base date shall be per the Works Order.**

Where the PPA differs in this regard to contract price adjustment, the PPA will take precedence.

**Schedule E.2: Certificate of Authority for Partnerships/ Joint Ventures/ Consortiums**

**This schedule is to be completed if the tender is submitted by a partnership/joint venture/ consortium.**

1. We, the undersigned, are submitting this tender offer as a partnership/ joint venture/ consortium and hereby authorize Mr/Ms \_\_\_\_\_, of the authorised entity \_\_\_\_\_, acting in the capacity of Lead Partner, to sign all documents in connection with the tender offer and any contract resulting from it on the partnership/joint venture/ consortium’s behalf.
2. By signing this schedule the partners to the partnership/joint venture/ consortium:
  - 2.1 warrant that the tender submitted is in accordance with the main business and objectives of the partnership/joint venture/ consortium;
  - 2.2 agree that the CCT shall make all payments in terms of this Contract into the following bank account of the Lead Partner:  
 Account Holder: \_\_\_\_\_  
 Financial Institution: \_\_\_\_\_  
 Branch Code: \_\_\_\_\_  
 Account No.: \_\_\_\_\_
  - 2.3 agree that in the event that there is a change in the partnership/ joint venture/ consortium and/or should a dispute arise between the partnership/joint venture/ consortium partners, that the CCT shall continue to make any/all payments due and payable in terms of the Contract into the aforesaid bank account until such time as the CCT is presented with a Court Order or an original agreement (signed by each and every partner of the partnership/joint venture/ consortium) notifying the CCT of the details of the new bank account into which it is required to make payment.
  - 2.4 agree that they shall be jointly and severally liable to the CCT for the due and proper fulfilment by the successful tenderer/supplier of its obligations in terms of the Contract as well as any damages suffered by the CCT as a result of breach by the successful tenderer/supplier. The partnership/joint venture/ consortium partners hereby renounce the benefits of excussion and division.

SIGNED BY THE PARTNERS OF THE PARTNERSHIP/ JOINT VENTURE/ CONSORTIUM		
NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....

**Note: A copy of the Joint Venture Agreement shall be appended to *List of Other Documents Attached by Tenderer Schedule*.**

**Schedule E.3: Declaration for Procurement above R10 million**

If the value of the transaction is expected to exceed R10 million (VAT included) the tenderer shall complete the following questionnaire, attach the necessary documents and sign this schedule:

1. Are you by law required to prepare annual financial statements for auditing? **(Please mark with X)**

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

If YES, submit audited annual financial statements:

- (i) For the past three years, or
- (ii) Since the date of establishment of the tenderer (if established during the past three years)

By attaching such audited financial statements to **List of Other Documents Attached by Tenderer Schedule**.

2. Do you have any outstanding undisputed commitments for municipal services towards the CCT or other municipality in respect of which payment is overdue for more than 30 (thirty) days? **(Please mark with X)**

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

2.1 If NO, this serves to certify that the tenderer has no undisputed commitments for municipal services towards any municipality for more than three (3) (three) months in respect of which payment is overdue for more than 30 (thirty) days.

2.2 If YES, provide particulars:


3. Has any contract been awarded to you by an organ of state during the past five (5) years? **(Please mark with X)**

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

If YES, insert particulars in the table below including particulars of any material non-compliance or dispute concerning the execution of such contract. Alternatively attach the particulars to **List of Other Documents Attached by Tenderer** schedule in the same format as the table below:

Organ of State	Contract Description	Contract Period	Non-compliance/dispute (if any)

4. Will any portion of the goods or services be sourced from outside the Republic, and if so, what portion and whether any portion of payment from the CCT is expected to be transferred out of the Republic? **(Please mark with X)**

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

If YES, furnish particulars below


The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the CCT of any other remedies available to it.

\_\_\_\_\_  
Signature  
Print name:  
On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
Date

## Schedule E.4: Preference Points Claim Form In Terms Of the Preferential Procurement Regulations 2022

### 1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 **To be completed by the organ of state**  
The applicable preference point system for this tender is the 90/10 preference point system..
- 1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
  - (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	90
<b>SPECIFIC GOALS</b>	10
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

### 2. DEFINITIONS

The following definitions shall apply to this schedule:

- (a) "tender" means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) "price" means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) "rand value" means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) "tender for income-generating contracts" means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) "The Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

**3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES**

**POINTS AWARDED FOR PRICE**

**THE 90/10 PREFERENCE POINT SYSTEMS**

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

90/10

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

**4. POINTS AWARDED FOR SPECIFIC GOALS**

4.1 In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/documentation stated in the conditions of this tender:

4.2 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	To be Completed by the Organ of State	To be Completed by the Tenderer
	Number of points Allocated (90/10 system)	Number of points claimed (90/10 system)
Gender	3	
Race	3	
Disability	1	
Promotion of Micro and Small Enterprises	3	

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3 Name of company/firm.....

4.4 Company registration number: .....

**4.5 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company

State Owned Company

[Tick applicable box]

4.6 I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I 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 paragraphs 4.1 and 4.2, the Supplier may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering 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) recommend that the tenderer or Supplier, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

<i>Signature of Tenderer</i>	<i>Date</i>	<i>Name and Surname</i>	<i>Address</i>

For official use.		
<b>SIGNATURE OF CCT OFFICIALS AT TENDER OPENING</b>		
1.	2.	3.

<b>Schedule E.5: Declaration of Interest – State Employees (MBD 4 amended)</b>
--

1. No bid will be accepted from:
  - 1.1 persons in the service of the state<sup>1</sup>, or
  - 1.2 if the person is not a natural person, of which any director, manager or principal shareholder or stakeholder is in the service of the state, or
  - 1.3 from persons, or entities of which any director, manager or principal shareholder or stakeholder, has been in the service of the City of Cape Town (CCT) during the previous twelve (12) months, or
  - 1.4 from an entity who has employed a former CCT employee who was at a level of T14 or higher at the time of leaving the CCT's employ and involved in any of the CCT's bid committees for the bid submitted, if:
    - 1.4.1 the CCT employee left the CCT's employment voluntarily, during the previous twelve (12) months;
  - 1.5 a person who was a CCT employee, or an entity that employs a CCT employee, if
    - 1.5.1 the CCT employee left the CCT's employment whilst under investigation for alleged misconduct, or
    - 1.5.2 was facing disciplinary action or potential disciplinary action by the CCT, or
    - 1.5.3 was involved in a dispute against the CCT during the previous thirty six (36) months.
  
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 tenderer 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 tenderer or his or her representative: \_\_\_\_\_
  - 3.2 Identity Number: \_\_\_\_\_
  - 3.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): \_\_\_\_\_
  - 3.4 Company or Close Corporation 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: \_\_\_\_\_
  - 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 tenderer 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: \_\_\_\_\_
- 3.15 Have you, or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company been in the service of the CCT in the past twelve months? **YES / NO**  
 3.15.1 If yes, furnish particulars: \_\_\_\_\_
- 3.16 Do you have any employees who was in the service of the CCT at a level of T14 or higher at the time they left the employ of the CCT, and who was involved in any of the CCT's bid committees for this bid? **YES / NO**  
 3.16.1 If yes, furnish particulars: \_\_\_\_\_

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

Full Name	Identity Number	State Employee Number

If the above table does not sufficient to provide the details of all directors / trustees / shareholders, please append full details to the tender submission.

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the CCT of any other remedies available to it.

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

**'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) an executive 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.

**Schedule E.6: Conflict of Interest Declaration**

1. The tenderer shall declare whether it has any conflict of interest in the transaction for which the tender is submitted. **(Please mark with X)**

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

1.1 If yes, the tenderer is required to set out the particulars in the table below:


2. The tenderer shall declare whether it has directly or through a representative or intermediary promised, offered or granted:

2.1 Any inducement or reward to the CCT for or in connection with the award of this contract; or

2.2 Any reward, gift, favour or hospitality to any official or any other role player involved in the implementation of the supply chain management policy. **(Please mark with X)**

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

If yes, the tenderer is required to set out the particulars in the table below:


***Should the tenderer be aware of any corrupt or fraudulent transactions relating to the procurement process of the CCT, please contact the following:***

***The CCT's anti-corruption hotline at 0800 32 31 30 (toll free)***

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the CCT of any other remedies available to it.

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

## Schedule E.7: Declaration of Tenderer's Past Supply Chain Management Practices (MBD 8)

Where the entity tendering is a partnership/joint venture/consortium, each party to the partnership/joint venture/consortium must sign a declaration in terms of the Municipal Finance Management Act, Act 56 of 2003, and attach it to this schedule.

- 1 The tender offer of any tenderer may be rejected if that tenderer or any of its directors/members have:**
- a) abused the municipality's / municipal entity's supply chain management system or committed any fraudulent 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) or Database of Restricted Suppliers.
- 2 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
2.1	<p><b>Is the tenderer or any of its directors/members listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</b></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>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.1.1	If so, furnish particulars:		
2.2	<p>Is the tenderer or any of its directors/members 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) or Database of Restricted Suppliers?</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>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.2.1	If so, furnish particulars:		
2.3	<p>Was the tenderer or any of its directors/members 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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.3.1	If so, furnish particulars:		

Item	Question	Yes	No
2.4	Does the tenderer 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"/>
2.4.1	If so, furnish particulars:		
2.5	Was any contract between the tenderer 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"/>
2.5.1	If so, furnish particulars:		

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract,, restriction of the tenderer or the exercise by the CCT of any other remedies available to it.

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

<b>Schedule E.8: Authorisation for the Deduction of Outstanding Amounts Owed to the CCT</b>
---

To: THE CITY MANAGER, City of Cape Town

From: \_\_\_\_\_  
(Name of tenderer)

**RE: AUTHORISATION FOR THE DEDUCTION OF OUTSTANDING AMOUNTS OWED TO THE CCT**

The tenderer:

- a) hereby acknowledges that according to SCM Regulation 38(1)(d)(i) the City Manager may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the tenderer (or any of its directors/members/partners) to the CCT, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months; and
- b) therefore hereby agrees and authorises the CCT to deduct the full amount outstanding by the Tenderer or any of its directors/members/partners from any payment due to the tenderer; and
- c) confirms the information as set out in the tables below for the purpose of giving effect to b) above;

Physical Business address(es) of the tenderer	Municipal Account number(s)	Inside the CCT municipal boundary (Yes/No)

If there is not enough space for all the names, please attach the information to **List of other documents attached by tenderer** schedule in the same format:

Name of Director / Member / Partner	Identity Number	Physical residential address of Director / Member / Partner	Municipal Account number(s)	Inside the CCT municipal boundary (Yes/No)

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the CCT of any other remedies available to it.

\_\_\_\_\_  
Signature  
Print name:  
On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
Date

<b>Schedule E.9: Certificate of Independent Tender Determination</b>
--

I, the undersigned, in submitting this tender number **156S/2025/26** and tender description: **PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW** in response to the tender invitation made by THE CCT, do hereby make the following statements, which I certify to be true and complete in every respect:

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

1. I have read and I understand the contents of this Certificate;
2. I understand that this tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorised by the tenderer to sign this Certificate, and to submit this tender, on behalf of the tenderer;
4. Each person whose signature appears on this tender has been authorised by the tenderer to determine the terms of, and to sign, the tender on behalf of the tenderer;
5. For the purposes of this Certificate and this tender, I understand that the word 'competitor' shall include any individual or organisation other than the tenderer, whether or not affiliated with the tenderer, who:
  - (a) has been requested to submit a tender in response to this tender invitation;
  - (b) could potentially submit a tender in response to this tender invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the tenderer and/or is in the same line of business as the tenderer.
6. The tenderer has arrived at this tender independently from and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>1</sup> will not be construed as collusive price quoting.
7. In particular, without limiting the generality of paragraphs 5 and 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 tender;
  - (e) the submission of a tender which does not meet the specifications and conditions of the tender; or
  - (f) tendering with the intention not to win the contract.
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 tender invitation relates.
9. The terms of this tender have not been and will not be disclosed by the tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender 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 tenders and contracts, tenders 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, Act 89 of 1998, and/o/r 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 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004, or any other applicable legislation.

\_\_\_\_\_  
Signature

Print name:

On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
Date

**(<sup>1</sup> Consortium: 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**



## Schedule E.11: List of Other Documents Attached By Tenderer

The tenderer has attached to this schedule, the following additional documentation:

	Date of Document	Title of Document or Description (refer to clauses / schedules of this tender document where applicable)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		

Attach additional pages if more space is required.

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

**Schedule E.12: Record of Addenda to Tender Documents**

We confirm that the following communications received from the CCT before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

**Schedule E.13: Information to Be Provided With the Tender**

The following information shall be provided with the Tender:

1. License certificate or confirmation of submissions for application for a trading license issued by NERSA to the tendering entity or juristic entity within the tendering entity must be provided, as per 2.2.1.1.4 of the Conditions of Tender

\_\_\_\_\_  
Signature  
Print name:  
On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
Date

## Schedule F.14: Appeal Application

annexure 'B'

OFFICIAL RECEIPT  
(Valid only if printed  
by official cash  
receiving machine)

IRISITI ESESIKWENI  
(Isemthethweni kuphela  
xa ishicilelwe  
ngumatshini wokukhupa  
irisiti osesikweni.)

AMPTELIKE KWITANSIE  
(Geldig alleenlik indien deur  
amptelike kontantvangs  
masjien gedruk.)

**GL DATA CAPTURE RECEIPT  
(CASHIERTO RETAIN A COPY)**

RECEIPT NO: \_\_\_\_\_

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

SAP GL:

8	1	0	1	0	0
---	---	---	---	---	---

PROFIT CENTRE:

1	3	0	5	0	0	0	0	1
---	---	---	---	---	---	---	---	---

NAME/COMPANY NAME:

AMOUNT:

						R	3	0	0	-	0	0
--	--	--	--	--	--	---	---	---	---	---	---	---

SERVICE DEPARTMENT DETAILS-

DEPARTMENT: LEGAL SERVICES: APPEALS UNIT

CONTACT PERSON: CHARLENE CEBEKHULU / MELANIE CLOETE

PHONE NO: 021 400 2503 / 021 400 3788

OFFICIAL RECEIPT  
(Valid only if printed  
by official cash  
receiving machine)

IRISITI ESESIKWENI  
(Isemthethweni kuphela  
xa ishicilelwe  
ngumatshini wokukhupa  
irisiti osesikweni.)

AMPTELIKE KWITANSIE  
(Geldig alleenlik indien deur  
amptelike kontantvangs  
masjien gedruk.)

**GL DATA CAPTURE RECEIPT  
(CASHIERTO RETAIN A COPY)**

RECEIPT NO: \_\_\_\_\_

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

SAP GL:

8	1	0	1	0	0
---	---	---	---	---	---

PROFIT CENTRE:

1	3	0	5	0	0	0	0	1
---	---	---	---	---	---	---	---	---

NAME/COMPANY NAME:

AMOUNT:

						R	3	0	0	-	0	0
--	--	--	--	--	--	---	---	---	---	---	---	---

SERVICE DEPARTMENT DETAILS-

DEPARTMENT: LEGAL SERVICES: APPEALS UNIT

CONTACT PERSON: CHARLENE CEBEKHULU / MELANIE CLOETE

PHONE NO: 021 400 2503 / 021 400 3788

CIVIC CENTRE    IZIKO LOLUNTU    BURGERSENTRUM  
12 HERTZOG BOULEVARD CAPE TOWN 8001 P O BOX 298 CAPE TOWN 8000  
[www.capetown.gov.za](http://www.capetown.gov.za)

Making progress possible. Together.

**Schedule E.15-A: Concluded an Energy Contract with a Generator and/or has generation assets under its portfolio**

Inline Clause 2.2.1.1.4, the following information is critical for evaluation:

The power generation plant project with a contracted capacity of at least 5 MWac must have reached financial close							
TITLE AND PROJECT DESCRIPTION	A signed letter from from the seller to the Company confirming an Energy Contract has been concluded; accompanied by: <ul style="list-style-type: none"> <li>• If the generation asset is still to be constructed - A signed financial close confirmation letter or certificate from the lender or financing institution indicating financial close has been achieved and/or; draw down notice from lender or financing institution and/or</li> <li>• If the generation asset has reached commercial operation – A grid connection energised and formally confirmed (Eskom/municipal energisation) certificate</li> </ul> N.B. Contactable references (at minimum names, e-mail and telephonic correspondence details)						
	Name of Generator/Seller (include Contact Details)	Role on project by tendering entity	Location of Generation Asset	Contracted Capacity (MW)	Power output/rating (MW)	Financial close Date	Attached evidence (refer above – confirm)
1							
2							
3							
4							
5							

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

**Schedule E.15-B: Concluded an Energy Contract with a customer**

Inline Clause 2.2.1.1.4, the following information is critical for evaluation:

Conclusion of a power purchase, wheeling or power trading agreement with a contracted capacity of at least 1 MWac								
TITLE AND PROJECT DESCRIPTION		A signed Power Purchase, Wheeling or Power Trading Agreement between the Company and its customer and/or a signed letter from customer that a Power Purchase, Wheeling or Power Trading Agreement between the Company and the customer is effective. The letter must include details of the contracted capacity and effective date of contract. N.B Contactable references (at minimum names, e-mail and telephonic correspondence details)						
		Name of Customer (include Contact Details)	Role on project by tendering entity	Location of Generation Asset	Contracted Capacity (MW)	Power output/rating (MW)	Effective Date of Contract	Attached evidence (refer above – confirm)
1								
2								
3								
4								
5								

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

**Schedule E.15-C: Demonstrated Market Trading Execution**

Inline Clause 2.2.1.1.4, the following information is critical for evaluation:

Evidence of accumulated traded volumes (MWh) across contracts over past 5 years.						
TITLE AND PROJECT DESCRIPTION		Energy Invoices Issued and Paid (showing traded kWh or rand value) and/or; Settlement Statements from Market Operator (e.g. Eskom, Municipality, Private Trading Platform) and/or; Metering or Reconciliation Reports (from either the local authority or Eskom/NTCSA). N.B Contactable references (at minimum names, e-mail and telephonic correspondence details)				
		Name of Customer (include Contact Details)	Role on project by tendering entity	Volume traded per annum (GWh)	Accumulated volume traded over the past 5 years (GWh)	Attached evidence (refer above – confirm)
1						
2						
3						
4						
5						

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the tenderer (duly authorised)

\_\_\_\_\_  
 Date

## Annexure F – WORK ORDER REQUEST RETURNABLES

### Schedule F.1: Key Technical Details

For information purposes only. This information will be requested as part of the secondary stage of the process. The following information is critical for evaluation in the secondary stage and will serve as contract data which will be used for planning as well as contract and performance management.

Technical parameter	Value	Criteria	Unit
(a) Contracted Capacity	To be completed in the secondary stage	$\geq 5$	MW
(b) Date of first availability of Contracted Capacity	To be completed in the secondary stage	As per panelist schedule (E.13)	YYYY/MM/DD
(c) Contracting Duration	To be completed in the secondary stage	Maximum: $\leq 120$ Minimum: $\geq 24$	Months
(d) To be completed in the secondary stage Generation plant location with respect to CCT network	To be completed in the secondary stage	None	Inside/ Outside/ Both
(e) The tenderer may not procure energy or power from generating plants that the CCT has an exclusive and/or existing contract with (including existing SSEG plants currently feeding into the CCT network and remunerated at the existing CCT feed-in rates); or is part of an existing tender process.	To be completed in the secondary stage	No	Yes/ No

\_\_\_\_\_  
Signature  
Print name:  
On behalf of the panelist (duly authorised)

\_\_\_\_\_  
Date

## Schedule F.2: Annualized Generation Profile

For information purposes only. This data for the TOU period generation anticipated to be traded for a representative calendar year at P90 probability, will be requested as part of the secondary stage of the process. The following information is critical for evaluation in the secondary stage and will serve as contract data which will be used for planning as well as contract and performance management. This information will also be used for ranking in the secondary stage as per clause 2.1.5.1 of the Conditions of Tender.

Month	Annual P90 Generation for Benchmark Tariff Time of Use (TOU) Periods		
	Peak (MWh)	Standard Time (MWh)	Off-peak (MWh)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
TOU totals			
Annual P90 Generation Total			
Capacity Factor $\left( \frac{\text{Total Generation over Contract Term}}{\text{Contracted Capacity} \times \text{Hours in Contract Term}} \right)$			

FOR INFORMATION PURPOSES ONLY

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the panelist (duly authorised)

\_\_\_\_\_  
 Date

**Schedule F.3: Hourly Generation Profile**

For information purposes only. This data for the hourly generation anticipated to be traded for one representative calendar year at P90 probability, will be requested as part of the secondary stage of the process. The following information is critical for evaluation in the secondary stage and will serve as contract data which will be used for planning as well as contract and performance management. This information will also be used for ranking in the secondary stage as per clause 2.1.5.1 of the Conditions of Tender.

Date-Time	P90 Generation (kWh)
01 January 01:00	
01 January 02:00	
01 January 03:00	
⋮	
01 January 22:00	
01 January 23:00	
01 January 24:00	
⋮	
01 December 22:00	
01 December 23:00	
⋮	
Contract Term	
Annual Generation Total	
Capacity Factor $\left( \frac{\text{Annual Generation Total}}{\text{Contracted Capacity} \times 8760} \right)$	

\_\_\_\_\_  
 Signature  
 Print name:  
 On behalf of the panelist (duly authorised)

\_\_\_\_\_  
 Date



## Annexure H – Works Order Allocation

### PROCEDURES FOR THE ALLOCATION OF WORKS ORDERS

The procedures for the allocation of Works Orders, given below, are to be read in conjunction with P1.3 in this Part A1.2 Work Allocation Procedures. These procedures include the development of Works Order contract documents, applying the tendered rates in order to arrive at financial offers, calculating Works Order evaluation points, ranking the panel of contractors, and allocating the Works Order to the highest ranked contractor.

The procedures are summarised under the stages below, wherein the Employer (acting through his agent) shall

#### **Stage 1: Employer prepares Works Order contract document, and prepares a Works Order evaluation ranking for all contractors in region**

- a) prepare a Works Order contract document, including Scope Work therein;

#### **Stage 2: Contractors collect copy of Works Order contract document and Works Order evaluation ranking, attend compulsory Works Order meeting and submit acceptance/refusal notices**

- e) make available to the contractors a copy of the Works Order contract document;
- f) simultaneously, invite the contractors to attend a compulsory Works Order meeting;
- g) conduct the Works Order meeting, including discussing any issues the contractors may have (this may result in changes being made to the Works Order contract document and its being re-issued); and
- h) receive acceptance/refusal notices from contractors timeously after the meeting;

#### **Stage 3: Contractors submit completed Works Order contract document and Employer allocates Works Order**

- i) request the contractors, who attended the Works Order meeting and accepted the work opportunity, to complete the Pricing Schedules, Returnable Schedules, Form of Offer, Works Order Acceptance/Refusal Notice, etc. in the Works Order contract document and submit the completed document to the Employer; and
- j) test submission for completeness and allocate the Works Order to the highest scoring responsive contractor.

Further details of the procedures under the above stages are given below.

#### **Stage 1**

As and when the Employer requires work to be executed in a Works Order under the framework contract, the Employer shall specify, *inter alia*, the nature, extent, scope of work, proposed programme and contract period for the work required, in a **Works Order contract document** comprising, as relevant, Work Allocation Procedures, Returnable Schedules, Agreements and Contract Data, Bills of Quantities and Scope of Work.

The Employer shall detail the specific Scope of Work in the Works Order. The Contractor will be required to provide a financial offer for this specific Works Order.

#### **Stage 2**

The Employer shall invite the contractors to attend a compulsory **Works Order meeting** at a time and venue disclosed in writing by the Employer.

The Employer shall issue the invitation **seven (7) days** prior to the meeting date.

The Employer shall conduct the compulsory Works Order meeting on the date specified. The purpose of this meeting is to inform the contractors of the Scope of Work required in the Works Order. The meeting shall furthermore serve to answer any queries the contractors may have in respect of the required work, etc. (this may result in changes being made to the Works Order contract document and its being re-issued).

Included in the Works Order contract document is a Works Order **Acceptance/Refusal Notice** (Form C1.9) requesting the contractor to state in writing whether he accepts/refuses the opportunity afforded to participate further in the work allocation procedure (i.e. that he is willing/not willing to undertake the work specified in the Scope of Work and has/has not the necessary resources, available to complete the work within the required Works Order contract period should he be allocated the work).

Contractors will be required to complete and return the Works Order Acceptance/Refusal Notice, either by fax or email, to the Employer prior to the closing date for receipt of Works Order Acceptance/Refusal Notices (non-submission will be regarded as a refusal), including, for those who accept, declaring whether their declarations in

respect of sub-contractors made in the Preferencing Schedule in the Framework Contract document stand for the Works Order, or not - refer to Form C1.9 in this regard.

**Stage 3**

Upon request of the Employer, the Works Order contract document shall be completed, signed and returned by the contractors who has accepted to the Employer's agent's offices no later than the date stated in such request.

The Employer will specify the proposed Works Order commencement date and duration for completing the specified Works in the Scope of Work in the Works Order contract document.

The submission of a fully completed and signed Works Order contract document is mandatory for the contractors who has been requested by the Employer to submit their offers, and the contractors may be requested by the Employer to complete and/or sign their submission, if necessary, should they have not already done so.

A contractor whose offer is non-responsive, or who failed to return the completed, signed Works Order contract document (the offer) by the date stated in the Employer's request, will be **excluded** from further participation in the Works Order allocation process.

Acceptance of the successful contractor's offer takes place on the date the contractor (now Contractor in terms of the Contract) receives the City of Cape Town's official **purchase order**, such date being the Commencement Date of the Works Order contract.

Working days for these procedures are Mondays to Fridays.

**Annexure I: Draft Power Purchase Agreement**



**CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD**

**POWER PURCHASE AGREEMENT**

**CITY OF CAPE TOWN PROGRAMME FOR THE  
PURCHASE OF ELECTRICITY FROM ELECTRICITY  
TRADERS**

# POWER PURCHASE AGREEMENT

between

\_\_\_\_\_ as Seller

and

THE CITY OF CAPE TOWN as Buyer

pursuant to

**PURCHASE OF ELECTRICAL POWER FROM ENERGY TRADERS AND/OR AGGREGATORS FOR THE CITY OF CAPE TOWN (PANEL APPOINTMENT) OF UP TO 500MW**

## 1 INTRODUCTION / PREAMBLE

- 1.1 The purpose of this agreement is for the sale by the Seller and purchase by the Buyer of electricity generated (as specified in an annual generation profile and within specified technical parameters), pursuant to the Seller being appointed by the Buyer to a panel of energy traders following a lawfully compliant procurement process, and the subsequent successful bidding by the Seller for a specific supply of electricity to be confirmed via a works order issued by the Buyer.
- 1.2 The Buyer wishes to procure electricity from Energy Traders such as the Seller due to their ability to contract with a pipeline of independent power producers in short term electricity purchase contracts.
- 1.3 This Agreement is entered into pursuant to the Seller's appointment to the panel of electricity traders governed by a separate Memorandum of Agreement (MOA). The MOA sets out the general terms and conditions applicable to panel membership, while this Agreement governs the specific transaction awarded to the Seller.
- 1.4 The Parties acknowledge that the appointment of the Seller to the panel of energy traders and the specific Works Order issued in terms of this Agreement do not confer any exclusivity on the Seller, and the Buyer may procure electricity from other panel members or third parties in accordance with applicable law.

## 2 PARTIES TO THE AGREEMENT

- 2.1 The Seller is \_\_\_\_\_ a company duly registered in terms of the laws of the Republic of South Africa, with registration number \_\_\_\_\_ and main place of business situated at \_\_\_\_\_, duly represented herein by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_, duly authorised.
- 2.2 The Buyer is the City of Cape Town, a metropolitan municipality proclaimed as such in terms of the provisions of the Local Government: Municipal Structures Act No. 117 of 1998, with its main place of business situated at 12 Hertzog Boulevard, Cape Town, represented herein by Edgar Capes in his capacity as Director: Electricity Generation and Distribution, duly authorised.
- 2.3 The Seller is the lawful holder of an electricity trading licence, issued by the National Energy Regulator of South Africa (NERSA), a copy of which is appended to this agreement as Annexure \_\_\_\_.
- 2.4 The Seller warrants that all generation plants from which electricity is sourced under this Agreement are operational and duly registered with NERSA.

## 3 DEFINITIONS AND INTERPRETATION

- 3.1 The words and expressions mentioned below shall have the meanings assigned to them:
- “Affected Party” means a Party to this Agreement which is rendered unable to perform its contractual obligations under this Agreement due to the occurrence of a Force Majeure Event;
- “Change in Control” means any change whatsoever in control, whether effected directly or indirectly, excluding any change of control in respect of a company listed on a stock exchange.
- “Change in Law” means:

- (a) any enactment, promulgation, execution, ratification or issue of any new Law or any change, amendment, alteration, modification, repeal or commencement of any existing Law, or any change in the interpretation or application of any Law, by a competent court, tribunal or legislature in South Africa, other than any Law which, at the Effective Date, has been published in a bill or draft statutory instrument and is available for public scrutiny, to the extent such Law is enacted in the form so published; or
- (b) any change in any requirement in relation to any Consent as a result of any administrative action which is contrary to the interpretation thereof which existed and was generally accepted at the Effective Date;
- (c) in each case coming into effect after the Effective Date.

“Consents” means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority in connection with the fulfilment of the obligations of the parties in terms of this Agreement.

“Corrupt Act” or “Corrupt Activities” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another person. For the sake of clarity, the definition of corrupt activities should be understood as including the following:

- (a) any payment or anything else of value to any official of any government or public international organisation (including any officer or employee of any government department, agency or instrumentality) to influence or reward his or its decision, or to gain any other advantages for either Party in connection with this Agreement;
- (b) any payment or anything else of value to any representative of a private enterprise (whether for profit or otherwise) to improperly, dishonestly and outside the ordinary course of ethical business practice, influence or reward his or its decision, or to gain any other advantage; and/or
- (c) any act or omission that constitutes a contravention of any Anti-Bribery and Corruption Laws.

“Deemed Energy” means that energy output that would otherwise be available to the Buyer, but for a System Event, as determined in accordance with the provisions of this Agreement.

“Delivery Point” means the physical or virtual point, situated on the respective grid, at which the energy supply provided by the Seller feeds or may be wheeled into the grid.

“Direct Loss” means, in respect of either Party, any losses, liabilities, expenses, damages, costs and claims arising directly as a result of the other Party's failure to perform its obligations under this Agreement, and for the avoidance of doubt, includes, in respect of the Seller, any loss of payment which would have been due to it but for the Buyer's breach of this Agreement.

“Effective Date” means the date of signature of this Agreement by the last signatory.

“Energy Traders” means an entity that is able to contract in this manner, and is a lawful holder of an electricity trading licence, issued by the National Energy Regulator of South Africa (NERSA)

“Eskom” means Eskom Holdings SOC Limited, a state-owned company established in terms of the Eskom Conversion Act, 13 of 2001, including its divisions for Generation and Distribution, and its wholly owned subsidiary, the National Transmission Company of South Africa (SOC) Ltd (NTCSA) (Company Registration Number 2021/539129/30). The NTCSA is responsible for the operation, maintenance, and development of the national transmission system, and any reference to Eskom in this Agreement shall include, where applicable, the NTCSA or any successor entity lawfully established to perform these functions, as reconfigured by law from time to time.

“Force Majeure” means any act, event, or circumstance, or any combination of acts, events or circumstances which:

- (a) is beyond the reasonable control of the Affected Party;
- (b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement;
- (c) could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting in accordance with the standards of a reasonable and prudent operator; and
- (d) prevents, hinders or delays the Affected Party in its performance of all (or part) of its obligations under this Agreement,

“Force Majeure Event”

Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that they satisfy the requirements set out in sub-clauses (a) through (d) above:

- (i) any action or failure to act by a Responsible Authority, including without limitation, any Consent (a) ceasing to remain in full force and effect other than in accordance with the terms and conditions upon which it was issued or by reason of the failure of the holder thereof to comply with any of its terms or conditions or (b) not being issued or renewed upon application having been properly made;
- (ii) lightning, fire, earthquake, tsunami, drought, unusual flood, violent storm, cyclone, typhoon, tornado, ionizing radiation or other natural calamity or act of God;
- (iii) pandemic, epidemic or plague (including for the avoidance of doubt any effects of the outbreak of COVID-19 (or any mutations or further strains thereof)); and any instruction, regulation, directive legislation or the like issued by a Responsible Authority in response to such acts, events or circumstances;
- (iv) any stage of loadshedding implemented by Eskom.

- (v) strikes, lock-outs and other industrial action other than by employees of the Affected Party or of any contractor or supplier of the Affected Party;
- (vi) acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving the Republic of South Africa;
- (vii) civil unrest, or community unrest, acts of rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within the Republic of South Africa, except in respect of these acts forming part of or directly caused by strikes, lock outs and other industrial action by the employees of the Affected Party or of any contractor or supplier of the Affected Party;
- (viii) boycott, sanction or embargo;
- (ix) Grid outages lasting more than 30 (thirty) consecutive days;
- (x) explosions or other catastrophic equipment failures.

Notwithstanding any other provision of this Agreement, the following shall not constitute Force Majeure/a Force Majeure Event:

- (A) failure of any Party to make any payment of money in accordance with its obligations under this Agreement, provided always that the obligation of the Affected Party to make such a payment of money is not excused in terms of this Agreement by reason of a Force Majeure Event;
- (B) late delivery of fuel, equipment, machinery, plant, spare parts or materials caused by negligent conduct or wilful misconduct on the part of the Affected Party or any of its suppliers or contractors;
- (C) late performance by any Party, caused by such Party or such Party's equipment suppliers, suppliers, contractors, or subcontractors, except where such cause is itself a Force Majeure Event;
- (D) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by any Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (E) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
- (F) any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Consent;
- (G) strikes, lockouts and other industrial action by the employees of the Affected Party, or any contractor of the Affected Party, unless such action is part of any wider industrial action involving a significant section of the construction industry or the electricity supply sector;
- (H) wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;

- (I) any failure or delay by a Responsible Authority to issue any permits, licenses or approvals which a Party is required to provide under this Agreement and for which such Party has duly and timeously applied for, and has diligently pursued in accordance with the standards of a reasonable and prudent operator;
- (J) an event, circumstance or situation that arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any environmental Laws or of any Responsible Authority imposing additional conditions on the Affected Party in terms of any Consents issued in terms of any environmental Laws;
- (K) unavailability of personnel employed by or contracted to the Seller, its Contractors and Equipment Suppliers;
- (L) The discovery of fossil, archaeological, cultural, or historical remains or artefacts.

“Generation Profile” means the hourly generation output aggregated by the Seller for supply to the Buyer for one year, measured in MWh, that is expected to be exceeded at a given probability, for example 95% of the time for a P95 estimate.

“Independent Expert” means:

- (a) a chartered accountant of not less than ten (10) years professional experience, nominated at the request of any Party by the President for the time being of the South African Institute of Chartered Accountants: Western Cape Region, if the matter relates primarily to a financial or financial management matter; or
- (b) a senior attorney or advocate with knowledge of infrastructure and energy transactions or a distinct speciality in project finance of not less than ten (10) years professional experience agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the Chairman for the time being of the Legal Practice Council: Western Cape, if the matter relates primarily to a legal matter; or
- (c) an electrical or power engineer of not less than ten (10) years professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter.

“Law” means:

- (A) any statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal bylaws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and

- (B) any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority, or direction or rule of a Responsible Authority which is legally binding or, if not legally binding, would customarily be complied with by a reasonable and prudent operator.

“Load shedding” means a controlled process that responds to unplanned events in order to protect the electricity power system from a total blackout.

“NERSA” means the National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act, 4 of 2004, or such other regulator as may be appointed to perform the relevant functions of NERSA.

“Parties” means the Buyer and the Seller, and “Party” shall mean either of them, as the context requires.

“Personal Information” has the meaning assigned to it in the Protection of Personal Information Act.

“Processing” or “Process” has the meaning set out in the Protection of Personal Information Act.

“Renewable Energy Certificate” (“REC”) means a certificate, credit, allowance, green tag or other transferable identification including any and all right and title thereto and/or interest therein, including without limitation ownership of and the right of access to the underlying reporting rights, generated and issued under the Applicable Programme and evidencing production of a specified quantity of renewable energy by an eligible renewable energy resource, which certificate, credit, allowance, green tag or other transferable identification is legally distinguishable and/or separately transferable from any rights in and to the renewable energy itself. A REC serves as a recording of the information that 1000 kilowatt-hours of electricity was generated and supplied (net) through the operation of the Facility and is an environmental tracking of the generation of 'green' power by the Facility;

“Responsible Authority” means any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes the Buyer.

“Seller Default” means any of the following events or circumstances (in each case, other than where solely due to Force Majeure or a System Event):

- (a) an order being made for the winding-up, liquidation, business rescue or dissolution of the Seller (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);

- (b) NERSA lawfully withdraws, revokes or cancels the Seller's trading licence due to the Seller's act or omission;
- (c) the Seller fails to comply with any provision of this Agreement relating to Changes in Control and Assignment;
- (d) a material Consent required by the Seller for the Project is revoked or not renewed, due to a breach by the Seller;
- (e) the Seller abandons its contractual obligations in terms of this agreement; and
- (f) any of the Seller warranties fails, at any time during the existence of this Agreement, to be true and correct in all material respects and the Seller fails to remedy, cure or correct that untruth and incorrectness within a period of 120 (one hundred and twenty) days of such warranty failing to be true and correct in all material respects;
- (g) any other breach of any material provision of this Agreement has occurred more than once and:
- (h) the Buyer has given an initial warning notice to the Seller describing that breach in reasonable detail and stating that if that breach persists or recurs then the Buyer may take further steps to terminate this Agreement; and
- (i) The Buyer has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 45 (forty-five) days after the initial warning notice, stating that if that breach persists or recurs within the period of 45 (forty-five) days after the final warning notice then the Buyer may exercise its rights relating to Seller default.

“Shareholder” means a holder of equity in a company.

“System Event” means:

- (a) any delay solely attributable to the Buyer in connection with the connection to the Buyer's grid; or
- (b) any Curtailment or constraint, unavailability, interruption, breakdown, inoperability or failure of or disconnection from, the whole or any part of the Buyer's grid, that is not caused by any Force Majeure Event or an act or omission of the Seller.

“Trading” means the wholesale or retail buying or and selling of electricity as a commercial activity.

“ToU” means the time of use tariff as determined by Eskom (being peak, standard, off-peak, high demand and low demand), or equivalent concepts/tariff as determined by Eskom, or the relevant market operator, or any regulatory authority, from time to time.

“VAT” means value-added tax as provided for in the Value-Added Tax Act No.89 of 1991.

3.1 The following principles of interpretation shall apply to this agreement:

- 3.1.1 The index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement;
- 3.1.2 Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 3.1.3 References to any recital, clause, paragraph, schedule or annex are to those contained in this Agreement, and references to a part of a schedule are to the part of the schedule in which the reference is relevant, and all schedules and annexes to this Agreement are an integral part of this Agreement. If there is any conflict between of the main body of this Agreement and the provisions of any of the schedules or annexes, the provisions of the main body shall prevail;
- 3.1.4 Unless otherwise specified, all references to any time shall be to the time of day in Cape Town, South Africa;
- 3.1.5 “Person” includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is by law as the subject of rights and duties, and references to a “person” (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees;
- 3.1.6 In computation of periods of time from a specified day to a later specified day, “from” means from and including and “until” or “to” means to and including;
- 3.1.7 “Include”, “including” and “in particular” shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words “other” and “otherwise” shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible;
- 3.1.8 References to a “Party”, the “Seller” or the “Buyer” shall include its successors and permitted assignees, provided that, in the case of the Seller, the relevant transfer or assignment has received the prior written approval of the Buyer;

- 3.1.9 References to this “Agreement” or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented, or replaced from time to time, provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the Buyer;
- 3.1.10 References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 3.1.11 References to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it;
- 3.1.12 The terms “hereof”, “herein”, “hereunder” and similar words refer to this entire Agreement and not to any particular clause, paragraph, part, schedule or any other subdivision of this Agreement;
- 3.1.13 The rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 3.1.14 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this; and
- 3.1.15 If any provision in this clause is a substantive provision conferring rights or imposing obligations on either Party then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 3.2 In the event of a conflict between this agreement and any other agreement or document processed in connection with the purchase and sale dealt with herein, this Agreement shall prevail.

#### **4 SALE AND PURCHASE OF ENERGY**

- 4.1 The Seller hereby sells to the Buyer who purchases the quantum of electricity reflected in the works order issued by the Buyer, subject to the terms and conditions contained in this agreement. The quantum shall be measured in megawatt-hours (MWh) unless otherwise specified in the Works Order.

- 4.2 The Buyer shall pay to the Seller the rate cited in the bid and the works order, as adjusted from time to time in accordance with the contract price adjustment mechanism as reflected in the tender document.
- 4.3 Title to, and risk of loss in, the Energy shall pass from the Seller to the Buyer at the Delivery Point specified in the applicable Works Order. The Seller shall bear all risk and responsibility until delivery is completed at the Delivery Point, at which point all risk, liability, and ownership shall pass to the Buyer.
- 4.4 The Parties shall cooperate in good faith to ensure accurate metering and reporting of delivered energy in accordance with the Metering Specification.
- 4.5 Any changes to the delivery schedule shall be notified in writing by the Party proposing the change, at least five (5) Business Days in advance.
- 4.6 The Seller shall not sell, deliver, transfer, or otherwise allocate any energy contracted under this Agreement to any third party without the Buyer's prior written consent. For the avoidance of doubt, this restriction applies to all energy supplied under this Agreement, including any associated intangible or tradeable benefits, as described in Clauses 4.7 to 4.9.
- 4.7 All renewable energy intangible or tradeable benefits, including RECs or equivalent instruments, relating to the Energy supplied under this Agreement shall vest exclusively in the Buyer. The Parties acknowledge that no single industry-standard platform currently exists for the recording or transfer of such benefits. The Buyer shall notify the Seller in writing of the platform to be used for certification, and any subsequent changes thereto shall be communicated promptly. The Seller shall comply with any applicable legal, regulatory, or market changes that may impact the recording, transfer, or ownership of such benefits.
- 4.8 The Seller shall take all reasonable and necessary steps to ensure that all renewable energy intangible or tradeable benefits associated with the Energy supplied are recorded in the relevant registry for the exclusive benefit of the Buyer. The Seller shall implement any reasonable measures required to comply with future legal, regulatory, or market changes affecting the recording or registration of such benefits.
- 4.9 The Seller warrants that, at the time of delivery, all renewable energy intangible or tradeable benefits, including RECs, relating to the Energy supplied:
- 4.9.1 have not been previously sold, transferred, or otherwise monetized to any third party; and
  - 4.9.2 are accurately recorded for the benefit of the Buyer.

In the event that any such benefits have been previously disposed of or are incorrectly recorded, the Seller shall immediately notify the Buyer in writing and indemnify and hold harmless the Buyer against any and all claims, losses, damages, or liabilities arising therefrom.

- 4.10 The Buyer shall be responsible for all reasonable costs associated with the accrual, recordal, and certification of renewable energy intangible or tradeable benefits, as reflected in the applicable Work Order, and such costs shall be transferred monthly to the Buyer. Any additional costs arising from future legal, regulatory, or market changes affecting the recording, transfer, or ownership of such benefits shall be mutually agreed in writing by the Parties prior to incurring such costs.
- 4.11 Such costs shall be invoiced monthly by the Seller to the Buyer and are payable in accordance with Clause 4.12.
- 4.12 The following principles shall apply in respect of invoicing for electricity sold by the Seller to the Buyer:
- 4.12.1 All amounts due shall be subject to VAT, unless provided otherwise in law.
- 4.12.2 Invoices shall be paid within 30 Business Days of receipt of invoice.
- 4.12.3 Payments due by either party to the other shall be paid in South African Rand to such bank account as the recipient party may from time to time nominate in writing.
- 4.13 The following shall apply in respect of any billing and metering disputes that may arise between the parties:
- 4.13.1 Any Party disputing an invoice or metering record shall notify the other Party in writing as soon as reasonably practicable, before the due date for payment of the invoice, specifying the amount in dispute and details of the basis of the dispute.
- 4.13.2 Where the Seller's invoiced quantities differ from the metering data or records of Eskom or the Buyer (whether wheeled or embedded), the Eskom or Buyer records shall prevail. The Seller shall have ten (10) Business Days from receipt of notification to provide supporting evidence demonstrating the correct measurement.
- 4.13.3 All amounts not disputed shall be paid within the time stipulated for payment in terms of this agreement.
- 4.13.4 The Parties will use their best endeavours to resolve the dispute as soon as practicable, and in any event within 30 days of the notice of the dispute served pursuant to this clause.
- 4.13.5 Any dispute not resolved pursuant to Clauses 4.13.1 to 4.13.2 shall first be referred in accordance with the internal referral process set out in Clause 19.2. If the dispute remains unresolved within fifteen (15) Business Days, or such longer period as the Parties may agree, either Party may refer the dispute to the Independent Expert appointed under Clause 20.

4.13.6 In the event that the Independent Expert does not render a decision within the prescribed period, or the Parties are unable to agree on the implementation of the Independent Expert's determination, the Parties shall promptly return to good faith negotiation for a period of fifteen (15) Business Days.

4.13.7 If the dispute remains unresolved after this period, either Party may refer the dispute to litigation in the High Courts of South Africa, as set out in Clause 19.4. Nothing in this Clause shall relieve either Party from performing its undisputed obligations under this Agreement.

4.13.8 If it is agreed or determined that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment.

4.13.9 Notwithstanding the existence of any dispute, neither Party shall be relieved from performing its contractual obligations in a timely manner while the dispute is being resolved.

## **5 SCOPE OF SUPPLY**

- 5.1 The Seller shall supply to the Buyer the quantum of electricity defined in a specific award made by the Buyer's Bid Adjudication Committee (BAC), following a competitive bidding process. Each supply request shall be adjudicated and awarded independently, and this Agreement shall be executed only upon such award.
- 5.2 The electricity supplied may originate from any type of generation that conforms to the technical specifications set out in the tender document.
- 5.3 The duration of supply shall be \_\_\_\_\_ as recorded in the Buyer's works order.
- 5.4 The point of connection of the generation facilities contracted or aggregated by the Seller, being the physical or virtual point at which electricity is aggregated or through which it is wheeled, may connect directly to the Buyer's grid or be wheeled into it in accordance with all applicable grid connection, access, and wheeling requirements.
- 5.5 The Seller shall ensure that all Electricity eligible for delivery under this Agreement is sourced only from generation plants that are physically or virtually connected to the national or municipal transmission grid, and that such Electricity is delivered in accordance with all applicable grid access and wheeling requirements.
- 5.6 The date of first purchase of electricity delivered in terms of this agreement shall be within \_\_\_\_\_ months of the date of signature hereof or such date as may be agreed in writing by the Parties.

## **6 ROLES AND RESPONSIBILITIES OF THE SELLER**

- 6.1 The Seller shall supply the contracted amount of electricity to the Buyer as per the works order issued by the Buyer, subject to the terms and conditions set out in the bid documents, the tender award and the works order.

- 6.2 The Seller shall invoice the Buyer for electricity supplied on a monthly basis or sooner as agreed by the parties.
- 6.3 The Seller shall retain its trading licence issued by NERSA for the duration of this agreement. Failure to do so shall constitute a material breach of this agreement.
- 6.4 The Seller shall adhere to the following technical requirements in respect of the electricity supplied in terms hereof:
  - 6.4.1 The Seller shall comply with all applicable grid technical standards, whether the supply is embedded in the Buyer's grid or regulated by another supply authority.
  - 6.4.2 The electricity supplied by the Seller shall comply with the standards of quality and availability as per the generation profile submitted by the Seller.
  - 6.4.3 The Seller shall comply with the specifications and other requirements as set out in the tender document for the Seller's appointment to the panel of electricity traders.

## **7 ROLES AND RESPONSIBILITIES OF THE BUYER**

- 7.1 The Buyer shall make payment of the charges levied by the Seller within 30 days of receipt of invoice or as agreed otherwise.
- 7.2 The Buyer shall be responsible for providing verifiable embedded generators' metering information to the Seller, for purposes of invoice reconciliation and contract administration.
- 7.3 The Buyer shall ensure timely communication to the Seller of any changes to its operational requirements or relevant regulatory conditions that may affect the delivery of electricity.
- 7.4 The Buyer shall cooperate with the Seller to facilitate access to metering equipment and other infrastructure as reasonably required for monitoring, verification, or dispute resolution purposes.
- 7.5 The Buyer shall notify the Seller promptly of any dispute or discrepancy arising from invoicing, metering, or performance issues, and shall act in good faith to resolve such disputes in accordance with the dispute resolution procedures set out in this Agreement.
- 7.6 The Buyer shall comply with all applicable laws and regulations relevant to the performance of its obligations under this Agreement.

## **8 FORCE MAJEURE**

- 8.1 Subject to the remainder of this clause, the Party claiming relief shall be relieved from liability under this Agreement to the extent that, by reason of the Force Majeure event, it is not able to perform all or a material part of its obligations under this Agreement.
- 8.2 Where a Party is (or claims to be) affected by an event of Force Majeure:
  - 8.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and to resume performance of its obligations affected by the event of Force Majeure as soon as practicable, and shall use all reasonable endeavours to remedy its failure to perform; and

8.2.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations.

8.3 The Party claiming relief shall serve written notice on the other Party within five Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

8.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 15 Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

8.5 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

8.6 If, following the issue of any notice, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

8.7 The Seller's sole right to relief in relation to the occurrence of an event of Force Majeure shall be as provided in this clause.

8.8 If, during any 12 month period commencing on 1 July, the cumulative duration of Force Majeure events or their consequences, each of which event lasts 24 hours or longer, exceeds 60 or more days, the Seller shall be entitled to an extension of the Term and/or other relief from the Buyer as shall place the Seller in the same overall economic position as it would have been in but for such Force Majeure event, provided that any compensation shall not take a monetary form and the total extension of the Term shall not exceed 10 years and any requested extension must be approved in writing by the Buyer's delegated authority.

## 8.9 **Termination upon Force Majeure**

8.9.1 If a Force Majeure Event occurs which prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive days, then either Party may terminate this Agreement by giving the affected Party 90 days' written notice. The Termination Date shall be the date on which such 90-day period expires.

8.9.2 In the event that either Party terminates this Agreement in accordance with this clause, no termination payment shall be due by either Party.

**9 PENALTIES**

9.1 The Seller shall be liable for performance penalties arising from failure to meet its contractual obligations under this Agreement, except where the failure arises from an event of Force Majeure under Clause 8.

9.2 The schedule below sets out the events constituting breaches and the compliance corresponding penalties applicable to the Seller. These penalties shall be applied without prejudice to any other rights or remedies available to the Buyer under this Agreement or at law.

No.	Event	Penalty
1	Shortfall in electricity delivered relative to the contracted quantity	Tiered penalty: <ul style="list-style-type: none"> <li>• Up to 2% shortfall: no penalty (minor deviation)</li> <li>• 2.01% – 5% shortfall: 1% of the value of the shortfall</li> <li>• 5.01% – 10% shortfall: 2% of the value of the shortfall</li> <li>• Above 10% shortfall: 3% of the value of the shortfall plus difference in cost per kWh with alternative source</li> </ul>
2	Non-compliance with applicable grid technical standards (embedded or regulated by another supply authority)	R2,500 per incident plus reasonable costs incurred by the Buyer to rectify the issue

9.3 Balance responsibility and any penalties relating thereto shall remain the liability of the Seller, except to the extent excused under Clause 8.

9.4 Any delay by the Seller in achieving the first delivery of electricity as agreed shall not result in an amendment to the contractual period. The Seller shall bear all financial consequences of such delay, including any loss of revenue arising from

the inability to trade electricity, for the duration of the delay, except where such delay is caused by an event of Force Majeure under Clause 8.

- 9.5 A grace period of 3 calendar days shall apply for any failure event before penalties under this clause begin to accrue, except where the failure arises from an event of Force Majeure under Clause 8.
- 9.6 Following the expiry of the grace period, the Seller shall have a cure period of 20 calendar days to remedy any failure before penalties escalate or before the Buyer may exercise termination rights, except where such failure arises from a Force Majeure event under Clause 8 of this Agreement.
- 9.7 If the Seller fails to cure the breach within the cure period, penalties for continued failure shall escalate as follows:
- 9.8.1 0.25% per calendar day of the applicable value of the works order for the first 7 days after the cure period;
- 9.8.2 1% per calendar day thereafter until the breach is remedied or the contract is terminated.
- 9.8 The total aggregate penalties payable by the Seller under this Agreement in any 12-month period shall not exceed 5% of the annual contract value. Penalties accrued beyond this cap shall be forfeited, but this shall not limit the Buyer's right to terminate the Agreement or seek other remedies.
- 9.9 The penalties set forth in this clause shall be applied without prejudice to any other rights or remedies available to the Buyer, including contract termination.

## **10 RISK MANAGEMENT**

- 10.1 A performance guarantee shall be in place as per the tender requirements, which shall take inception upon contract award and shall remain in force until the termination or expiry of this Agreement.
- 10.2 Commercial risk shall be managed by way of the Guaranteed Savings Adjustment, along with other penalties under Clause 9.
- 10.3 The provisions of this clause shall not detract from the force majeure provisions of this agreement.
- 10.4 It shall be the responsibility of the Seller to put contingency plans or backup arrangements in place, failing which performance penalties may apply as provided in Clause 9, except when delays or failures are due to Force Majeure.

## 11 REGULATORY COMPLIANCE

- 11.1 Both parties are responsible for the obtaining of the necessary licences required in order to enable them to fulfil their contractual obligations.
- 11.2 Should regulatory changes occur which require new or amended licences, this shall be the responsibility of the Seller.
- 11.3 Compliance with any national, regional or local environmental laws that apply to the supply shall be the responsibility of the Seller.

## 12 MONITORING AND REPORTING

- 12.1 The Buyer shall rely on the Eskom tariff as the default tariff to determine cost savings.
- 12.2 Upon invoicing the Buyer, the Seller must supply an invoice and consolidated statement which are mutually corroborative.
- 12.3 The Buyer and/or the National Treasury may perform an annual audit of the Seller's systems, processes, financial data and commercial operations.

## 13. CHANGE IN LAW

- 13.1 If any Change in Law occurs after the Effective Date, which materially impacts the Seller's ability to perform its obligations, then the Seller shall be entitled to an extension of the Term and/or relief from affected obligations, as reasonably necessary to place the Seller in substantially the same economic position as it would have been in but for such Change in Law, provided that the total extension of the Term shall not exceed five (5) years. Such relief shall be subject to section 116 (3) of the Local Government: Municipal Finance Management Act.
- 13.2 The provisions of this clause (Change in Law) shall not apply in respect of any Change in Law which:
  - 13.2.1 was foreseen by the Seller or could reasonably have been foreseen by the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Seller's ability to fulfil its contractual obligations; and

13.2.2 could reasonably have been foreseen by any person in the position of the Seller on or before the Effective Date as being reasonably likely to occur and to impact the Seller's obligations; or

13.2.3 relates to any changes in the rates, effect, application, implementation, enforcement or interpretation of any tax of any nature (including income, capital gains and value added taxes), custom duties, dues, levies, stamp duty, excise fees or charges; or

13.2.4 arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws.

13.3 The Seller shall use all reasonable endeavours to minimise and mitigate the effects of any Change in Law on the Seller.

13.4 Any Change in Law occurring after the Effective Date which materially impacts the Buyer's ability to perform its obligations under this Agreement, excluding events qualifying as Force Majeure, shall be promptly notified by the Buyer to the Seller. The Parties shall consult in good faith to agree on amendments to the Agreement necessary to place them in substantially the same economic and commercial positions as prior to the Change in Law. The provisions of this clause shall be subject to Section 116 of the Local Government: Municipal Finance Management Act. Such amendments may include, but are not limited to:

13.4.1 Adjustments to payment terms or schedules;

13.4.2 Extensions of time for performance;

13.4.3 Modifications to rights and obligations; and

13.4.4 Any other necessary changes.

13.5 Should the Parties fail to reach agreement within a reasonable period, the dispute resolution procedures of this Agreement shall apply.

## **14. TERMINATION**

14.1 Neither Party shall have any right, nor shall it exercise or purport to exercise, any right to terminate this Agreement except as expressly set out in this clause.

### **14.2 Termination for Seller Default**

14.2.1 Upon becoming aware of a Seller Default, the Buyer shall promptly notify the Seller in writing, specifying the nature and details of the default.

- 14.2.2 Upon the occurrence of a Seller Default, or within a reasonable time after becoming aware of it, the Buyer may, while the default continues, serve a written notice on the Seller requiring the Seller to remedy the default within ninety (90) days of receipt of such notice. If the default is not remedied within this period, the Buyer may issue a further written notice terminating this Agreement with immediate effect.

### **14.3 Buyer's Costs**

14.3.1 The Seller shall reimburse the Buyer with all direct costs incurred by the Buyer in exercising any of its rights in terms of this clause. The Buyer shall take reasonable steps to mitigate such costs.

14.3.2 The rights of the Buyer (to terminate or otherwise) under this clause are in addition to (and without prejudice to) any other right which the Buyer may have in law to claim the amount of any Direct Loss or damages suffered by the Buyer on account of the acts or omissions of the Seller (or to take any action other than termination of this Agreement).

### **14.4 Termination for Buyer Default**

14.4.1 Should the Buyer be in default by committing a Buyer Default, the Seller shall serve notice of the default occurrence (and specifying details) on the Buyer requiring the Buyer to remedy the Buyer Default referred to in such notice of default (if the same is continuing) within 90 (ninety) days of such notice of default being delivered. If the Buyer Default is not remedied within such period, the Seller may serve a further notice on the Buyer terminating this Agreement.

14.4.2 In the event of termination of this Agreement by the Seller in terms of this clause, the Buyer shall pay the amount due for Buyer Default.

### **14.5 Termination for Corrupt Activity**

14.5.1 The Seller hereby warrants to the Buyer that, as at the date of conclusion of this Agreement to the best of its knowledge and belief after having made due and careful enquiries, during the five (5) years preceding the Effective Date no Shareholder of the Seller, the Seller, a Contractor, Lender or any of their respective directors or employees:

- 14.5.1.1 has violated, or is violating, either directly or indirectly, any Anti-Bribery and Corruption Laws; or is party to or has participated in any Corrupt Activity; and

14.5.1.2 the Seller and each of its Shareholders, and to the best of its knowledge and belief after having made due and careful enquiry, maintains appropriate policies and procedures designed to promote compliance with applicable Anti-Bribery and Corruption Laws.

14.5.2 Seller Undertakings in regard to Corrupt Activity and Anti-Bribery and Corruption Laws. The Seller hereby undertakes to the Buyer that it:

14.5.2.1 shall not (and shall procure that no Shareholder of the Seller shall) at any time participate in a Corrupt Activity in any manner or contravene any Anti-Bribery and Corruption Laws;

14.5.2.2 shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it (and any of its Shareholders) from being or becoming involved in a Corrupt Activity, or from contravening any Anti-Bribery and Corruption Laws; and

14.5.2.3 shall (and shall take reasonable steps to procure that each of its Shareholders shall) maintain in effect and enforce policies and procedures designed to promote compliance, in all material respects, by the Seller, each Shareholder Company and their respective directors, officers, employees and agents with applicable Anti-Bribery and Corruption Laws.

## **14.6 Indemnity**

14.6.1 Subject to clause 27, the Seller hereby indemnifies the Buyer against any loss, damage or harm suffered by the Buyer as a direct or indirect consequence of a breach of any of the warranties or undertakings contained in this clause.

## **14.7 Reporting Obligations**

14.7.1 The Seller hereby undertakes to notify the Buyer immediately in writing immediately upon becoming aware thereof:

14.7.1.1 of any breach of any of the provisions of this clause; and

14.7.1.2 should it become aware that any of its directors, officers, employees and/or agents, or any of the directors, officers, employees and/or agents of any Group Company, have been subject to sanction in terms of any applicable Anti-Bribery and Corruption Laws.

14.7.2 If the Seller or any of its Shareholders admits to or is convicted of having committed any Corrupt Activity in relation to in respect of this Agreement, then the Buyer shall be entitled to act in accordance with the clauses below:

14.7.2.1 if the Corrupt Activity is committed by the Seller, any Shareholder, any director of the Seller, any director of any Shareholder, or any employee of the Seller or of any Shareholder acting under the authority of or with the knowledge of a director of the Seller or such Shareholder, as the case may be, then in any such case, the Buyer may terminate this Agreement with immediate effect by giving written notice to the Seller;

14.7.2.2 if the Corrupt Activity is committed by an employee of the Seller or of any Shareholder acting of his or her own accord, then in any such case, the Buyer may give written notice to the Seller of termination and this Agreement will terminate, unless within thirty (30) Business Days of the Seller's receipt of such notice that employee's involvement in the agreement is ended.

14.7.3 Any notice of termination under this clause (Termination for Corrupt Activity) shall specify:

14.7.3.1 the nature of the Corrupt Activity;

14.7.3.2 the identity of the party or parties who has or have committed the Corrupt Activity; and

14.7.3.3 the date on which this Agreement will terminate in accordance with the applicable provisions of this clause (Termination for Corrupt Activity).

14.7.4 Without prejudice to its other rights or remedies under this clause, the Buyer shall be entitled to recover from the Seller, the greater of:

14.7.5 the amount or value of the gift, consideration or commission which is the subject of the Corrupt Activity; and

14.7.6 any direct losses sustained by the Buyer in consequence of any breach of this clause (Termination for Corrupt Activity) by the Seller.

14.8 The Seller shall immediately notify the Buyer of the occurrence (and details) of any Corrupt Activity promptly upon the Seller becoming aware of its occurrence.

## **15 INTELLECTUAL PROPERTY OF THE BUYER**

15.1 All intellectual property rights whatsoever, whether capable of registration or not, regarding the Buyer's name, trademarks, logos, image(s) and all other intellectual property matters relating to the Buyer, including its name, trademarks, logos and/or image(s) shall remain the sole property of the Buyer.

- 15.2 Subject to existing rights and obligations and to the following clause, the Buyer may, on prior written application by the Seller, grant a non-exclusive, revocable right and licence to the Seller to use the Buyer's trademarks and logos for a period not to exceed the remainder of the Term.
- 15.3 In order to establish and maintain standards of quality and propriety acceptable to the Buyer, in the event that the Seller desires to use the Buyer's trademarks or logos in any way, the Seller shall first submit the concept or a sample of the proposed use to the Buyer for approval, which shall be in its sole and absolute discretion. The Buyer shall use reasonable endeavours to advise the Seller of its approval or disapproval of the concept or sample within 20 Business Days of its receipt of the concept or sample. If the Buyer approves the concept or sample, the Seller shall not depart therefrom in any respect without the Buyer's further prior written approval.
- 15.4 If at any time the Buyer revokes its approval for the specified use of any trademark or logo, the Seller shall immediately discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which the Buyer has revoked its approval. The costs incurred by the Seller as a result of such revocation shall be borne by the Seller only if the grounds for the revocation relate to a breach by the Seller as described in this Agreement.
- 15.5 The Buyer may revoke its approval immediately upon 10 Business Days written notice to the Seller if the Seller, or any of its directors or employees commits any crime or otherwise engages in conduct which violates any Law, or engages in any conduct that offends against public morals and decency and, in the Buyer's reasonable opinion, materially prejudices the reputation and public goodwill of the Buyer.
- 15.6 The Seller acknowledges that the name or names of the Buyer (the "Protected Names") are associated with and peculiar to the Buyer and are the intellectual property of the Buyer. Consequently, the Seller agrees that the sole and exclusive ownership of the Protected Names shall vest in the Buyer.
- 15.7 In circumstances where the Seller utilises any of the Protected Names, either on its own or in combination or association with any other name, it does so only in terms of this Agreement and with the prior approval of the Buyer. On termination or expiry of this Agreement, the Seller shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.
- 15.8 Within 20 Business Days after the end of the Term and where the Seller has operated a company utilising any of the Protected Names with the permission of the Buyer, the Seller shall either:
- 15.8.1 de-register the company bearing any of the Protected Names; or

15.8.2 change the name to a name not substantially similar to any of the Protected Names.

## **16 SET OFF**

Whenever any sum of money is agreed or determined to be due and payable by the Seller to the Buyer, such sum may at the Buyer's discretion and with its prior written consent, be deducted from or applied to reduce the amount then due, or which at any time afterwards may become due from the Buyer to the Seller; provided that the Buyer gives five Business Days' notice to the Seller of its intention to apply such deduction. This right may only be exercised against undisputed sums.

## **17 ASSIGNMENT**

### **17.1 Prohibition on Assignment**

17.1.1 The Seller may not sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "Assign") all or any part of its rights and/or obligations under this Agreement to a third party without the prior written approval of the Buyer.

17.1.2 The Buyer shall not Assign all or any part of its rights and/or obligations under this Agreement to a third party, save with the prior written approval of the Seller (such approval not to be unreasonably withheld or delayed) or to give effect to any mandatory requirement of any law.

## **18 CHANGES IN CONTROL**

18.1 Until the date falling thirty-six (36) months after the Effective Date, the Seller shall ensure that there is no change in the shareholding of the Seller.

18.2 After the expiry of the period referred to in Clause 18.1, the Seller shall not effect any Change in Control of the Seller without the prior written approval of the Buyer, which approval shall not be unreasonably withheld or delayed.

18.3 For purposes of this Agreement, "Change in Control" shall mean any event or series of events that results in a change of ownership, voting rights, or other arrangements sufficient to materially alter the control or management of the Seller.

18.4 The Seller shall promptly notify the Buyer in writing of any proposed transaction, agreement, or arrangement that may constitute a Change in Control, and shall provide such information as the Buyer may reasonably require to evaluate the proposed change.

## 19 DISPUTE RESOLUTION

### 19.1 Referable Disputes

The provisions of this clause shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

### 19.2 Internal Referral

19.2.1 If a dispute arises in relation to any aspect of this Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

19.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party, as have the seniority and authority to be able (if necessary, with consultation back to their respective organisations) to resolve it; and

19.2.1.2 if the Parties have been unable to resolve the dispute within 15 days of referral to internal officers or executives, either party may refer the dispute for decision by the accounting officer or accounting authority of the Buyer and the chief executive officer or equivalent officer of the Seller.

19.2.2 In attempting to resolve the dispute, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

19.2.3 Any dispute which has not been resolved by the representatives of the parties within 15 days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

### 19.3 Performance to continue

No reference of any dispute to any resolution process in terms of this clause shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

### 19.4 Litigation

19.4.1 Save where any dispute has been expressly referred for determination in terms of the fast-track resolution clause, if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts of South Africa by either Party.

19.4.2 Neither Party is limited in any proceedings before the High Court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

## **20 FAST TRACK DISPUTE RESOLUTION**

20.1 Disputes expressly referred for determination pursuant to this clause shall be determined by the relevant Independent Expert.

20.2 Within five Business Days after a dispute has been referred by Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

20.3 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.

20.4 The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

20.5 The Independent Expert shall provide both Parties with his written decision on the dispute, within 20 Business Days of (or such other period as the Parties may agree after the referral). The Independent Expert shall give his reasons for the award, if so, requested by either Party.

20.6 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.

20.7 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the law.

- 20.8 Should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a judge in the High Court of South Africa, save that if by law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.
- 20.9 The proceedings shall be confidential, and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his or her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by the confidentiality provisions contained in this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 20.10 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 20.11 Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:
- 20.11.1 give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
- 20.11.2 warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.
- 20.12 The Independent Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act, 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his determination or the procedure by which he reaches his determination. The Independent Expert's decision shall be final and binding on the Parties.

## **21 LIABILITY**

### **21.1 Direct losses**

21.1.1 The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under delict or contract, shall be as detailed in this Agreement, and no Party shall have any additional liability to the other Party in respect of such claim.

21.1.2 Notwithstanding anything contained to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the first Party.

21.1.3 Save as expressly provided elsewhere in this Agreement, neither Party shall be liable to the other Party for any losses, liabilities, expenses, damages, costs and claims (including Claims) suffered or claimed which arise out of, under or in connection with any alleged breach of any statutory duty or delictual act or omission or otherwise.

## **21.2 Mitigation**

The Parties shall comply with their common law duties to mitigate any losses, liabilities, expenses, damages, costs and claims (including Claims) they may have pursuant to this Agreement.

## **22 THIRD PARTY INDEMNITY**

Each Party (the "Indemnifying Party") indemnifies and holds harmless the other Party, its Affiliates, and their respective officers, employees, consultants, agents and representatives (the "Indemnified Parties") against any and all Claims which may be asserted against or suffered by any of the Indemnified Parties, which relate to any death, injury or loss or damage to property suffered by the relevant third party, to the extent resulting from any negligent act or omission of the Indemnifying Party and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more of the Indemnified Parties to take reasonable steps to mitigate or avoid the death, injury, loss or damage in question.

## **23 CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION**

### **23.1 Confidential Information**

Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the "Confidential Information") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with the Agreement.

## 23.2 Exclusions to Confidential Information

For the purposes of this clause, the term “Confidential Information” shall not include information which:

- 23.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this clause;
- 23.2.2 the Party receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this clause;
- 23.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- 23.2.4 is published by, or the publication of which is required by, a Responsible Authority or any court.

## 23.3 Permitted disclosure of Confidential Information

Notwithstanding the provisions of clause 23.2, the Confidential Information may be disclosed:

- 23.3.1 by either Party to any Responsible Authority (where for the purposes of this clause such definition shall be limited to South Africa) or to any of the shareholders (direct or indirect), agents, consultants, contractors, advisers, financiers, potential financiers, investors, potential purchasers of the interests of shareholders (direct or indirect), insurers or lenders of such Party or its affiliates, in any such case for the purpose of enabling the disclosing Party to comply with its obligations under this Agreement, provided that:
  - 23.3.1.1 such Party notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and
  - 23.3.1.2 such Party shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 23.3.2 by either Party as may be required by the regulations of any recognised securities exchange upon which the share capital of the Party (or any shareholder (direct or indirect) in the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall,

if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;

23.3.3 by either Party as may be necessary to comply with any obligation under any applicable law;

23.3.4 by either Party if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party; or

23.3.5 by either Party, if so agreed in writing by the Parties prior to the disclosure.

#### **23.4 Ownership and treatment**

23.4.1 Save for all Project Data, all information supplied by or on behalf of a Party shall remain the property of such Party, and this Agreement shall not operate to transfer ownership interest therein.

23.4.2 The Parties shall, in so far as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, shall clearly identify the Confidential Information as confidential.

#### **23.5 Protection of Personal Information**

23.5.1 It is acknowledged that each Party (each a "Receiving Party") cannot perform its obligations under this Agreement without Processing certain Personal Information, including the Personal Information provided by the other Party (each a "Disclosing Party").

23.5.2 Accordingly, the Disclosing Party hereby expressly consents to share the Personal Information with the Receiving Party and further consents to the Receiving Party Processing of the Personal Information disclosed to it by the Disclosing Party in accordance with this Agreement.

23.5.3 The Parties record that the Receiving Party will Process the Personal Information in accordance with the provisions of this Agreement and the Disclosing Party's reasonable instructions. When Processing the Personal Information, the Receiving Party will take all reasonable and appropriate technical and organisational precautions and measures necessary to prevent any (i) loss of, damage to, or unauthorised destruction of the Personal Information; or (ii) unauthorised or unlawful

access to or Processing of the Personal Information. For this purpose, the Receiving Party will:

- 23.5.3.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control; and
- 23.5.3.2 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- 23.5.4 The Disclosing Party hereby warrants, represents and undertakes that in respect of all Personal Information provided by it to the Receiving Party, all the consents necessary to ensure compliance by the Disclosing Party and the Receiving Party with applicable laws, including all relevant data protection Laws, have been obtained from the person or entity to whom such Personal Information relates, as well as any regulators or other third parties, in relation to:
  - 23.5.4.1 the transmission by the Disclosing Party to the Receiving Party in accordance with this Agreement or otherwise permitted by law;
  - 23.5.4.2 the transmission by the Disclosing Party or the Receiving Party of the Personal Information to the third parties in accordance with this Agreement or otherwise permitted by law; and
  - 23.5.4.3 the Processing by the Receiving Party of any Personal Information provided to it by the Disclosing Party in any country in which the Personal Information is held or Processed by the Receiving Party.

## **24 GOVERNING LAW AND JURISDICTION**

- 24.1 The validity, construction and performance of this Agreement shall be governed by the laws of South Africa.
- 24.2 Subject to the provisions of the fast track dispute resolution clause, each Party agrees that the High Court of South Africa, Western Cape Division shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

## 25 NOTICES

### 25.1 Methods of delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by or emailed to the address or number within South Africa of the Party concerned set out in this clause or amended in terms of its provisions. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

25.1.1 if delivered by hand during ordinary business hours, to its physical address, when so delivered;

25.1.2 if delivered by email, upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgement).

### 25.2 Addresses

The Parties choose the postal and physical addresses and contact details set out below:

25.2.1 The Seller:

Postal Address: [●]

Physical Address: [●]

Email Address: [●]

Tel No.: [●]

Attention: [●]; and

25.2.2 The Buyer:

Postal Address: [●]

Physical Address: [●]

Email Address: [●]

Tel No.: [●]

Attention: [●];

### 25.3 **Domicilium citandi et executandi**

The Parties choose the physical address set out opposite their names as their *domicilium citandi et executandi* for all purposes of and in connection with this Agreement. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

### 25.4 **Change in address**

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least 15 days' prior written notice to the other Party.

## 26 **WARRANTIES**

### 26.1 **Seller warranties**

The Seller represents and warrants to the Buyer as on the Signature Date and on each day thereafter during the Term, that:

- 26.1.1 it is a limited liability company, duly incorporated and validly existing under the laws of its country of incorporation, and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
- 26.1.2 it has the sole purpose, object and business of operating as an energy trader;
- 26.1.3 its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 26.1.4 the execution and performance of this Agreement do not and will not contravene any provision of the memorandum or articles of association or memorandum of incorporation of the Seller as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Seller as at the Effective Date;
- 26.1.5 all Consents required for the conduct of the Project are in full force and effect as at the Signature Date, save for any Consents which are not required under the law to be obtained by the Signature Date, provided

that the Seller warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

- 26.1.6 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Seller as at the Signature Date (having made all reasonable enquiries), threatened against it, which is likely to have a material adverse effect on the ability of the Seller to fulfil its contractual obligations;
- 26.1.7 the Seller is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to fulfil its contractual obligations;
- 26.1.8 no proceedings or any other steps have been taken or, to the best of the knowledge of the Seller (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Seller or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 26.1.9 all information disclosed by or on behalf of the Seller to the Buyer at any time up to the Signature Date and, in particular, during the bid process preceding the award of this Agreement to the Seller, is true, complete and accurate in all material respects and the Seller is not aware of any material facts or circumstances not disclosed to the Buyer which would, if disclosed, be likely to have an adverse effect on the Buyer's decision (acting reasonably) to enter into this Agreement with the Seller;

## **26.2 Buyer warranties**

The Buyer represents and warrants to the Seller as on the Signature Date and on each day thereafter during the Term, as follows:

- 26.2.1 it is duly established under the laws of South Africa and has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- 26.2.2 the execution and performance of this Agreement by it has been duly authorised by all necessary internal processes, and its obligations hereunder constitute valid, binding and enforceable obligations.

## 27 REPRESENTATIVES

### 27.1 Buyer's Representative

27.1.1 The Buyer shall appoint from the Signature Date until the Expiry Date an individual (the "Buyer's Representative") whose identity shall be notified to the Seller to act as the Buyer's duly authorised representative for all purposes connected with this Agreement. The Buyer shall notify the Seller in writing forthwith upon the replacement at any time of the Buyer's Representative and such replacement shall not be effective until notice has been given.

27.1.2 The Buyer's Representative may delegate any of his functions from time to time to a person or persons the identity of whom shall be notified to the Seller and references in this Agreement to the Buyer's Representative shall be construed to include such persons.

27.1.3 Any notice, instruction or information required to be given by or made to the Buyer shall only be valid if given by or delivered to the Buyer's Representative.

### 27.2 Seller's Representative

27.2.1 The Seller shall appoint from the Signature Date until the Expiry Date, an individual (the "Seller's Representative") whose identity shall be notified to the Buyer to act as the Seller's duly authorised representative for all purposes connected with this Agreement. The Seller shall notify the Buyer in writing forthwith upon the replacement at any time of the Seller's Representative and such replacement shall not be effective until such notice has been given.

27.2.2 Any notice, instruction or information required to be given by or made to the Seller shall only be valid if given by or delivered to the Seller's Representative.

## 28 BREACH OF CONTRACT

28.1 If a Party breaches any provision of this Agreement and fails to remedy such breach within 20 Business Days after receiving written notice requiring it to do so, the aggrieved Party shall be entitled, without limiting any other rights or remedies under this Agreement or applicable law, at its sole discretion, to:

- 28.1.1 Sue for specific performance requiring the defaulting Party to immediately fulfil its obligations under this Agreement, including but not limited to obligations related to delivery, as set out in Clause 9;
- 28.1.2 Terminate this Agreement by giving written notice to the defaulting Party, with such termination taking effect upon delivery of the notice;
- 28.1.3 In the event that the Buyer terminates the Agreement under clause 9.2, the Buyer may procure replacement electricity on terms it deems appropriate, and the Seller shall be liable to the Buyer for any excess costs incurred in procuring such replacement electricity amounts similar to those undelivered by the Seller;
- 28.1.4 The exercise of any rights under this clause shall be without prejudice to the Buyer's rights to enforce any performance guarantees provided by the Seller as detailed in Clause 9.3;
- 28.1.5 Any disputes arising from alleged breaches, notices, or termination under this clause shall be resolved in accordance with the dispute resolution procedures set out in Clauses 19 and 20.

## **29 MISCELLANEOUS**

### **29.1 Joint and several liability**

- 29.1.1 these persons shall be deemed to be jointly and severally liable to the Buyer for the performance of this Agreement;
- 29.1.2 these persons shall notify the Buyer of their leader who shall have authority to bind the Seller and each of these persons;
- 29.1.3 the Seller shall not alter its composition or legal status without the prior consent of the Buyer.

### **29.2 No partnership or agency**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**29.3 No amendment or variation**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties to this Agreement.

**29.4 Waiver**

29.4.1 The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.

29.4.2 No waiver shall be effective unless it is communicated in writing to the other Party.

29.4.3 No waiver of any right or remedy arising from a breach of contract shall constitute a waiver of any right or remedy arising from any other breach of this Agreement.

**29.5 Third Parties**

The Parties intend that terms and conditions of this Agreement shall be solely for the benefit of the Parties and their respective successors and shall not confer any rights upon any third parties.

**29.6 Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

**29.7 Entire Agreement**

29.7.1 This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and supersedes any prior written or oral agreement between them.

29.7.2 Each Party acknowledges and agrees that it is not entering into this Agreement in reliance on and shall have no right of action against the other Party in respect of, any assurance, promise, undertaking, representation or warranty made by the other Party at any time prior to the Signature Date, unless it is expressly set out in this Agreement.

**29.8 Further assurances**

Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

## **29.9 Public Relations and Publicity**

29.9.1 The Seller acknowledges that certain information pertaining to the Agreement may be required to be disclosed in accordance with the statutory reporting obligation of the Buyer to publish information about the performance of the Seller and/or any other information as it may be required to publish from time to time in response to enquiries from:

29.9.2 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act 1 of 1999 or the Local Government: Municipal Finance Management Act 56 of 2003;

29.9.3 the Auditor-General under the Public Audit Act 25 of 2004; and

29.9.4 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act 2 of 2000.

29.9.5 Neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.

29.9.6 To the extent that the Buyer is obliged to disclose or publish information, it undertakes to the Seller, if time permits, to consult with the Seller prior to any communication contemplated by this clause, and if time does not so permit, such consultation shall be dispensed with by the Parties.

## **29.10 Language**

This Agreement is made only in the English language. Each document referred to in this Agreement or to be delivered under it shall be in the English language.

## **29.11 Costs**

Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

## **29.12 Severability**

If any provision of this Agreement is held by a court or other Responsible Authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect, and this Agreement shall remain

in full force and effect as if such provision had not been contained in this Agreement. In the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

**29.13 City of Cape Town General Conditions of Contract and Special Conditions of Contract**

The Parties expressly stipulate and agree that:

29.13.1 the procurement represented by this Agreement is governed by the City of Cape Town General Conditions of Contract and Special Conditions of Contract set out in Tender No \_\_\_\_\_ apply to this Agreement; but

29.13.2 where the provisions of such General Conditions of Contract and/or Special Conditions of Contract contradict, are in conflict with, or do not align with, the provisions of this Agreement, the provisions of this Agreement shall prevail.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorised representatives.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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