



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER: ED 10 -2022/23**

<b>TENDER DESCRIPTION:</b>	<b>TENDER TO APPOINT SERVICE PROVIDER/S FOR THE PROVISION OF CLEANING AND RELATED SERVICES AT MAIN FRESH PRODUCE MARKET AND MARABASTAD RETAIL MARKET FOR A PERIOD OF THREE (3) YEARS</b>
----------------------------	--

**NAME OF BIDDER:** .....

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

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

Prepared by:  
City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria CBD  
0001

<b>BID CLOSING DATE</b>	<b>24 February 2022/23</b>
-------------------------	----------------------------

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

“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

DEPARTMENT: ECONOMIC DEVELOPMENT

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
ED 10 - 2022/23	Tender to appoint service provider/s for the provision of cleaning and related services at main fresh produce market and Marabastad retail market for a period of three (3) years	ECONOMIC DEVELOPMENT	THEMBI MAKIPI	Venue: 450 President Burger Street. Tshwane Market (Management building)  Date: 19 January 2023	24 February 2022/23 at 10:00

The document is downloadable on the National treasury website ([www.etenders.gov.za](http://www.etenders.gov.za)) and City of Tshwane website ([www.tshwane.gov.za](http://www.tshwane.gov.za))

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

City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria CBD  
0002  
Tel: 012 358 9999

**“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”**

Documents must be deposited in the bid box not later than **10:00 on 24 February 2023** when bids will be opened in public.

**Bidders must contact the following officials for any enquiries:**

- Technical enquiries: Thembi Makipi/ Patrick Mphahlele 012 358 2341/2352 or [Thembima@tshwane.gov.za](mailto:Thembima@tshwane.gov.za)
- Supply chain enquiries: Kgomotso Makgale or 012 358 5478 or [Kgomotsomakg@tshwane.gov.za](mailto:Kgomotsomakg@tshwane.gov.za)

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

Bids received after the closing date and time will not be considered.

The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.

## INDEX

Number	Details	Document	Page
1.	Very important notice on disqualifications		
2.	Certificate of authority for signatory		
3.	Scope of work		
4.	Pricing schedule		
5.	Invitation to bid	MBD 1	
6.	Pricing schedule: Firm prices (purchases)	MBD 3.1	
7.	Pricing schedule: Non-firm prices (purchases)	MBD 3.2	
8.	Declaration of interest	MBD 4	
9.	Declaration for procurement above R10 million (all applicable taxes Included)	MBD 5	
10.	Preference points claimed form	MBD 6.1	
11.	Local content form	MBD 6.2	
12.	Additional annexure for local content	MBD 6.3	
13.	Contract form: Rendering of services	MBD 7.2	
14.	Declaration of past supply chain management practice	MBD 8	
15.	Certificate of independent bid determination	MBD 9	
16.	General conditions of contract		
17.	Service-level agreement		
<b>LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT</b>			
1.	Company registration certificate		
2.	Rates and taxes or lease agreement		
3.	Clearance certificate or unique PIN		
4.	BBBEE certificate		
5.	CSD summary report		

## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

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

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

-----

**Bidder**

**CERTIFICATE OF AUTHORITY FOR SIGNATORY**

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

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

**A. COMPANY**

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

An example is shown below:

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

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

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

**DATE:** .....

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

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

2. ....

**B. PARTNERSHIP**

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

<b>Full name of partner</b>	<b>Residential address</b>	<b>Signature</b>
.....	.....	.....
.....	.....	.....
.....	.....	.....

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

.....  
**Signature**                      **Signature**                      **Signature**

.....  
**Date**                              **Date**                              **Date**

**C. ONE-PERSON BUSINESS**

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

.....  
**Signature**                      **Date**

**D. CLOSE CORPORATION**

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

An example is shown below:

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

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

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

**DATE:** .....

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

**WITNESSES:**     1. ....

                          2. ....



**E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES**

This returnable schedule is to be completed by joint ventures.

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

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



**ECONOMIC DEVELOPMENT AND SPATIAL PLANNING DEPARTMENT  
(FRESH PRODUCE MARKET DIVISION)**

**TENDER TO APPOINT SERVICE PROVIDER/S FOR THE PROVISION OF CLEANING  
AND RELATED SERVICES AT MAIN FRESH PRODUCE MARKET AND MARABASTAD  
RETAIL MARKET FOR A PERIOD OF THREE (3) YEARS**

**BID NAME: ED 10 -2022.23**

The City of Tshwane Metropolitan Municipality (COT) hereby invites interested and suitably qualified service provider to submit bid for cleaning and related services at Tshwane Market and Marabastad Retail Market for a period of 3 (three) years as and when required

COT hereby reserves the right to:

- To appoint an alternate service provider should the recommended service provider/s not be able to provide the required services and/or accept the appointment of the tender.

### **1. BACKGROUND**

Fresh Produce Market is required to ensure that its facilities/sites are Occupational Health and Safety (OHS) compliant in line with the OHS Act, no 85 of 1993 (as amended). Part of this requirement is to ensure a clean and safe working environment for its employees as well as the public and stakeholders that frequently visit Tshwane Market and Marabastad Retail Market facilities/sites.

The facilities/sites that require cleaning, decontamination and related services are based within Tshwane Market and Marabastad Retail Market in City of Tshwane and include, but are not limited to, office space, public areas, storerooms, ablutions, shower and change rooms, lifts, parking areas, gardens and horticultural sites, guardrooms, and Market halls.

### **2. PROJECT SCOPE**

The appointed service provider is required to provide cleaning and related services as indicated in the **SCHEDULE OF SERVICES TO BE PROVIDED AT TSHWANE FRESH PRODUCE MARKET AND MARABASTAD RETAIL MARKET hereinafter referred to jointly as Tshwane Market**, for a three (3) year period, as and when required.

Facilities/Sites are located at the Tshwane Market vary in terms of size and layout. Facilities/Sites may include, but are not limited to, office space, public areas, storerooms, stairways, ablutions, shower and change rooms, lifts, parking areas, guardrooms/offices, and Market halls.

Work to be performed by the successful service provider shall consist of labour, materials (sundries), equipment, machineries, and tools of trade for cleaning and related services throughout the Tshwane Market facilities, in respect of the following:

### **3. DEILVERABLES**

The bidder is required to bring the equipment's/tools, consumables and labour as listed in the scope of work

**a. GENERAL CLEANING REQUIREMENTS**

**Floors maintenance**

Hard floors. Regularly Sweeping and damp mopping of floors to ensure that all toilets' floors are always clean and litter free.

**b. Walls and paintwork.:**

- Regular spot cleaning low surfaces (fingermarks etc.). Weekly dusting, damp wipe high-profile windowsills, skirting, ledges, doors, and door frames, etc.
- Regularly dust and damp wipe horizontal surfaces (low level)

**c. Dusting/ damp wiping/ general:**

- Regularly dust and damp wipe high ledges fittings, etc. (to a height of 2m)
- Regularly, dust and damp wipe vertical surfaces. (to a height of 2m)
- Regularly dust and damp wipe wall fittings

**d. Glass and bright work**

- Spot clean glass doors and/or glass inserts
- Spot clean high-profile bright metal fittings (brass, chrome, copper, etc.)
- Daily polish high-profile bright metal fittings (brass, chrome, copper, etc.) Spot clean accessible faces (using normal step ladder where required) of internal partition
- Daily cleaning inside accessible faces (using normal step ladder where required) exterior facing windows
- Daily cleaning outside accessible faces (using normal step ladder where required) exterior facing windows
- Monthly cleaning inside un-accessible faces (using specialized equipment and scaffolding required) exterior facing windows
- Monthly cleaning outside un-accessible faces (using specialized equipment and or scaffolding required) exterior facing windows

**e. Public toilets, water closets and urinals**

The following must be done daily:

- Empty, clean and disinfect waste receptacles (excluding sanitary bins).
- Clean and disinfect bowls, basins, and urinals.
- Clean and polish bright metal fittings. Clean and disinfect pipework
- Clean and disinfect doors, partitions, etc. Clean and disinfect floors according to type.
- Replenish washroom consumables.
- Clean and disinfect shower cubicles

**f. Unplanned Cleaning:**

- Contractor will be required to assist with the cleaning of areas and walls outside the toilets on an ad hoc basis.

**g. Service Days**

- The contractor must on a continuous basis render services from Monday to Saturday and in some facilities services will be required on Sundays as well. Public holidays.
- The service provider will be responsible for all personnel management functions and the provisions of relief staff during leave, sick leave, desertions and stay-away, etc.

**h. Tools, Cleaning equipment, and minimum standard (INDUSTRIAL ONLY)**

- The service provider is expected to supply and maintain all tools, equipment, implements, machinery, and vehicles needed for the execution of the work and are required to be of the standards set by the Fresh Produce Market Division of the CoT.
- Cleaning equipment and machinery are to be supplied by the contractor, the cleaning equipment and machinery must be of industrial quality and will be inspected before awarding the tender. Failing to meet this requirement will result in cancelation of the contract.

- The industrial cleaning equipment and machinery supplied, need to be always fully operational and free of any defects.
- i. **Cleaning chemicals and Consumables:**  
The service provider will supply the following, daily:
- All paper washroom consumables. (Toilet paper and tidy towels)
  - Toilet paper, hand soap, deo blocks, cleaning chemicals, tools and replacement spares required for the maintenance of service areas I toilets.
  - Urinal P mats -gradual fragrance release 30+ days, sealed bristles for splash- back prevention and must contain no ozone-depleting ingredients
- j. **The following Tools/Equipment/Consumables must be supplied by the contractor:**
- All brooms, dusters, masks, goggles, gloves.
  - All cloths and rags (colour coded: floors, walls, bathrooms, etc), refuse bags, containers, any other consumables required to successfully comply with this tender.
  - All vacuum bags and related supplies for daily cleaning
  - All safety signs, equipment, and personal safety clothing, etc not supplied by the CoT are also the contractor's responsibility.
- k. **The following minimum equipment is needed for the maintenance of toilets and floors:**
- Soft broom for sweeping ceramic tiles (per cleaner)
  - Extendable window squeegee (minimum 3m) (per cleaner)
  - Trolley with a wringer and a mop for mopping the floors (per cleaner)
  - Feather duster (short and long) (per cleaner)
  - Refuse bags (approximately 100 bags per month)
  - Cleaning safety signs (per cleaner)
  - Step Ladder (minimum 6 step) (1 x per floor)
  - Toilet brush sets (per cleaner)
  - Industrial polishers (as and when required)
- l. **Safety clothing needed for all the cleaners and supervisors:**
- Safety clothing (gents 2-piece overalls/ ladies canteen dress, safety shoes, etc)  
The above requirements must be provided for the full contract period and the principal contractor is responsible to replace such items due to wear and tear, breakage, theft, etc.
- m. **The provision of sanitary and related services**  
Weekly Sanitary Bin Service Requirements include, but are not limited to, the following:
- The supply, management, replacement of bins with clean bins and/or emptying and safely removing and disposing of bin contents and sanitizing/decontamination of bins.
  - Reusable waste containers and waste-movement carts shall be thoroughly cleaned and disinfected with each service.
  - Disposal must be done at an environmentally acceptable medical/healthcare-waste disposable site.
  - Sanitary bins must always be available, in working order and, free of any damage.
  - Bags containing waste shall be such that their contents are prevented from leaking, non-transparent and fitting the bin comfortably. Every possible effort should be made to avoid the escape of any hazardous material during normal operations.  
Disposal documentation must be provided monthly for monitoring purposes.
  - Description of all material (Mini-bags, liners, refuse bags) used are also required for compliance purposes.
  - A guideline of the estimated quantities of sanitary bins is included in the regional breakdown below but will be subject to COT requirements, budget and available resources and numbers may vary accordingly:

- A minimum size of 350mm x 520mm x 84mm per bin (+- 17 liters) or similar. Smaller bins will not be accepted.
  - Sanitary bins must be serviced weekly.
  - All plastics and consumables used in rendering the service must be manufactured according to relevant ISO standards. ISO certification and relevant technical data, MSDS (Material Safety Data Sheets),
- n. Contractor responsibilities regarding use of machinery, garden tools and equipment's**  
 The Municipality will in no way whatsoever be liable for claims deriving from the use of such equipment by the contractor on his or her premises. The contractor must complete and sign an article agreement in terms of section 37(2) of the Occupational Health and Safety Act, 1933 (Act 85 of 1993), which is obtainable from the Functional  
 The contractor will be solely liable for any injury whatsoever sustained by his or her employees during execution of their duties.
- o. Horticultural maintenance**  
 Mowing of lawns
- All lawns must be mowed with an approved lawnmower. Mowing must be done to a
  - constant height not exceeding 20mm and must not be less than 5mm. Scars or marks will
  - not be acceptable.
  - Edges of lawns must be serviced with an acceptable mechanical edge cutter. All edge
  - cutting must be done on the same date as the mowing of lawns.
  - Lawn mowing and edge cutting must be done at least once a week
  - Care must be taken that no trees, shrubs, fences, poles, walls, paving, traffic signs etcetera are damaged during the cutting and mowing period. Any damage to public or private property caused by the contractor will be the responsibility of the contractor and must be handled appropriately.
- p. Weed control: mechanical and chemical**
- Application of herbicides will be done by the contractor
  - All weeds and grass removed must be collected and moved to disposal sites agreed on with the COT personnel. (Containers are available on the market site).
  - Maintenance and weed control of perimeter fences and service trenches
  - Once a month a 2m strip on both sides of the fences must be cleared of all grass weeds and plant material and treated with a weed killer.
  - Service trenches on the market premises covered with grids must be cleared of plant material, debris, etc. and disposed of in the disposal bins placed at various spots in the market.
  - All dead and unwanted leaves, branches and debris must be removed from trees and plants etc. and disposed of in the disposal bins.
  - The storm water channel at the top of the terrace must regularly be cleared of all plant material and accumulated debris
- q. Sweeping of roads and walkways**
- All grass, leaves and debris accumulating on the paving, concrete and tarred road during garden maintenance must be collected and disposed at the market designated waste collection point.
  - All leaves, seeds and loose material deriving from natural plant debris or from wind activity must be collected by raking or sweeping and disposed of at a disposal site agreed on. This must be done regularly.
  - All paper, cans, bottles, and other debris found in garden sites must be collected at a
  - disposal site agreed on and disposed of in the disposal bins placed the market designated waste collection point.
- r. Irrigation**  
 Water must under no circumstances be wasted, and perforated hosepipes may not be used. The irrigation of lawns, trees, hedges, flowerbeds, and any other plants must be done twice a week during winter and three times a week during summer, according to standards agreed on by the Cot personnel.
- s. Application of fertilizers**

All fertilizers will be supplied by the Cot personnel, at the request of the contractor.  
All lawns, flowerbeds, bushes, shrubs, and perennial plants must be treated with approved fertilizers every six weeks.

**Quantity and type of fertilizers:**

**Lawns:**

60 g/m<sup>2</sup> of 3:2:1 (25) + zinc fertilizer (application to start at the beginning of the new growing season)

**Young trees and shrubs:**

60 g/m<sup>2</sup> of 3:1:5 fertilizers per tree and/or shrub (application to start at the beginning of the new growing season)

**t. Perennial plants:**

100g/m<sup>2</sup> of 2:3:2 fertilizers (application to start at the beginning of the new growing season)

**u. Pruning of trees and shrubs (including rose bushes)**

All dead or unwanted branches and debris must be removed when necessary and when instructed thus by the Cot personnel and disposed of in the disposal bins placed at the northern platform of market hall A or on the southern side in the watermelon area.

**v. Removal of trees and shrubs**

All dead and unwanted trees and shrubs, as indicated by the Cot personnel, must be removed, and disposed in the disposal bins placed at the northern platform of market hall A or on the southern side in the watermelon area.

**w. Planting and care of annual and perennial material and flower bulbs.**

All annual and perennial plants and bulbs will be supplied by the service provider

Compost will be supplied by the service provider

**x. Preparation of existing and new flowerbeds must be done and maintained as follows:**

- All weeds, unwanted vegetation and roots must be removed without damaging existing wanted plant material.
- Compost must be applied across the total area of the flowerbed at a consistency of 50mm.
- Compost must be dug into flowerbeds and 2:3:2 fertilizer equal to 100 g/m<sup>2</sup> must be applied to a suitable level.
- Edges of flowerbeds must be tool-trimmed and levelled out.
- Plants and/or bulbs must be spaced across prepared flowerbeds during planting, according to supplied specifications.
- Flowerbed must be maintained free of roots, weeds, and grass.
- Sufficient water must be applied to ensure a constant growth rate.

**y. Planting and care of shrubs and young trees**

**Trees**

- A square hole, 750x750x750mm must be prepared.
- The hole must be filled with one-third compost and two-thirds soil.
- 200g of 2:3:2 and 200g of super-phosphate fertilizer must be mixed with the composted soil.

**Shrubs**

- A square hole 650x650x650mm must be prepared
- The hole must be filled with one-third compost and two-thirds soil.
- 200g of 2:3:2 and 200g of super-phosphate fertilizer must be mixed with the composted soil.
- Compost will be supplied by the contractor

**z. Filling of eroded surfaces**

All areas included in the contract must be inspected by the contractor at each service interval, with the view to identifying erosion of ground surfaces. Such eroded areas must be filled and stabilized.

#### 4. SCHEDULE OF SERVICES TO BE PROVIDED AT TSHWANE MARKET

##### a) CLEANING SERVICES

NO.	REQUIRED	FREQUENCY
1.	<b>ITEM 1: GENERAL CLEANING</b>	
1.1	<b>FLOOR MAINTENANCE –PLATFORMS AND OPEN SPACE ESTIMATED AT 344 590 m<sup>2</sup></b>	
1.1.1	Sweep and collection of dirt and deposit it to the rocker bins	Daily
1.1.2	Machine scrub and sweep market halls and platforms	Daily
1.1.3	Pick up any litter and dispose in dustbins	Daily
1.1.4	Sweep driveways and walkways including parking areas	Daily
1.1.5	Hose wash driveways and walkways (Use Industrial High-Pressure Washer).	Alternate days
1.1.6	Removal of netting materials around the market premises	Daily
1.1.7	Pick up litters outside perimeter	Daily
1.1.8	Mechanically sweep and scrub the trading floors and platforms	Daily
	Ride on Street sweeper	Daily
	Ride on deep cleansing scrubber	Weekly
1.1.9	Cleaning of storm water drainage system including grids	Weekly
1.2	<b>Item 2: walls, fencing, trussels and roofs estimated at 190 320 m<sup>2</sup></b>	
1.2.1	Roof ceiling and trussells	As and when
1.2.2	Barriers fencing	As and when
1.2.3	Removal of bird's droppings and nest	As and when

1.2.4	Dust / damp wipe high-profile, ledges, doors, and door frames	As and when
1.3	<b>ITEM 3: Cleaning and Management of ablution facilities and provision of Sanitary services 25 Ablution facilities with 136 cubicles</b>	
1.3.1	Regularly Sweeping and damp mopping of floors to ensure that all toilets' floors are always clean and litter free.	Daily
1.3.2	Regular spot cleaning low surfaces (fingermarks etc.)	Daily
1.3.3	Dust / damp wipe high-profile windowsills, skirting, ledges, doors and door frames,	Daily
1.3.4	Regularly empty, clean and disinfect waste receptacles (excluding sanitary bins)	Daily
1.3.5	Cleaning areas around the ablution facilities	Daily
1.3.6	Clean and decontaminate bowls, basins, and urinals	Daily
1.3.7	Clean mirrors	Daily
1.3.8	Maintenance of sanitary bins	Alternate days
1.3.9	Clean and decontaminate pipework	Weekly
1.3.10	Clean and decontaminate doors and handles, partitions, etc.	Weekly
1.3.11	Clean and decontaminate floors according to type	Daily
1.3.12	Replenish washroom consumables	Daily
1.3.13	Deep cleaning and descaling of Ablution facilities	As and when
1.3.24	Window cleaning inside and outside	As and when
1.3.15	Clean floor tiles and brick walls	Daily
1.3.13	Clean and decontaminate shower cubicles	Daily



**ITEM 4: HORTICULTURAL AND GARDENING SERVICES ESTIMATED AT 120 393 m<sup>2</sup>**

DESCRIPTION	SCHEDULE
<b>Mowing of lawns &amp; Maintenance of lawn areas</b>	
Lawns must be mowed with an approved electrical lawnmower to a constant height of 20mm	At least once a week
Cutting of lawn to a constant height of 20mm around the edges and obstacles	Together with the above
Edges must be trimmed with edge cutter	Together with the above
Removal of cuttings and litter to the central waste bin area.	Together with the above
<b>Irrigation</b>	
sprinkler system	2 times a week, more during summer
<b>Fertilizers</b>	
Apply: 3:2:1 (25) SR @ 60g/m <sup>2</sup> & zinc	At the beginning of new growing season
Watering after fertilizer has been applied	After fertilizer was applied

DESCRIPTION	SCHEDULE
Weed Control – Mechanical and Chemical.	
Removal of declared weeds, invader plants and other weeds not listed according to specifications.	As and when
Removal of removed plant material and litter to the central waste bin area.	Continuous

DESCRIPTION	SCHEDULE	
Maintenance and weed control of perimeter fences and service trenches inside the market and outside.		
Clear 2m fence area of grass, weeds, and plant material	once a month	
Clear covered service trenches and dispose of plant materials etc. in provided waste bins	Once a month	
All dead and unwanted leaves removed from trees and placed in provided waste bins	Once a month (more during Autumn and Winter)	

DESCRIPTION	SCHEDULE
Maintenance of terraces	Once a month
Control growth of grass and weeds – Weed control	Once a month
Fertilizers applied every 6 months	Twice yearly
Clear storm water channels from plant material and debris	Once a month

DESCRIPTION	SCHEDULE
<b>Sweeping of roads and walkways</b>	
Clear roads and walkways from plant material and debris and dispose of in provided bins	Continuously

DESCRIPTION	SCHEDULE
<b>Litter, leaf litter and rubbish collection</b>	
Collecting of litter and rubbish throughout the whole site as well as from litter bins.	Daily
Raking of leaves, seeds, and other dead plant material	Weekly
Removal of collected rubbish and plant material to the central waste bin area.	Daily
Tidiness of waste bin area	Daily

DESCRIPTION	SCHEDULE
Maintenance of areas with flower beds, shrubs, perennials, and annual vegetation	
<ul style="list-style-type: none"> <li> <b>Planting</b> </li> </ul>	
Annual and perennial plants to be procured from Parks & Horticulture	
Compost must be applied in prepared beds	
Prepare square hole, apply 1/3 compost and 2/3 soil	
<ul style="list-style-type: none"> <li> <b>Pruning</b> </li> </ul>	
Pruning of hedges	As ordered by the Cot personnel
Pruning of areas with flower beds shrubs, perennials, tuberous plants	As ordered by the Cot personnel
Removal of dead plant material from plants	Included in above
Removal of pruned or removed plant material to the central waste bin area.	Continuous
<ul style="list-style-type: none"> <li> <b>Weeding And Cultivation</b> </li> </ul>	
Removal of weeds and grass from areas with flower beds, shrubs, perennials, tuberous plants and hedges	Continuous
Cultivate areas with flower beds, shrubs, perennials, tuberous plants and hedges, to a depth of 50mm.	As and when
Maintenance of edges of beds according to specification.	Included in above

DESCRIPTION	SCHEDULE
Removal of weeds and grass to the central waste bin area.	Included in above
<ul style="list-style-type: none"> <li> <b>Irrigation</b> </li> </ul>	
Irrigation of areas with flower beds, shrubs, perennials, tuberous plants, and hedges @ 25mm.	See: IRRIGATION OF LAWN AREAS
Irrigation of areas with seedlings	Daily and/ or as specified by the Cot personnel
<ul style="list-style-type: none"> <li> <b>Application Of Fertilizer</b> </li> </ul>	
Apply: 3:1:5 @ 60 g/m <sup>2</sup> per tree	2 Times per year
Apply 2:3:2 @ 100g/m <sup>2</sup> in beds	Beginning of growing season
Watering after fertilizer has been applied	After application of fertilizer

DESCRIPTION	SCHEDULE
Maintenance of trees	
<ul style="list-style-type: none"> <li><b>Planting</b></li> </ul>	
Compost must be applied in prepared beds	
Prepare square hole, apply 1/3 compost and 2/3 soil	
<ul style="list-style-type: none"> <li><b>Pruning</b></li> </ul>	
All dead branches must be removed and disposed of in the provided bins	
<ul style="list-style-type: none"> <li><b>Weeding And Cultivation</b></li> </ul>	
Removal of weeds and grass from the water basins.	Constant
Removal of removed weeds and grass to the central waste bin area.	Constant
<ul style="list-style-type: none"> <li><b>Irrigation</b></li> </ul>	
Watering of trees with water basins	See: IRRIGATION OF LAWN AREAS
<ul style="list-style-type: none"> <li><b>Application Of Fertilizer</b></li> </ul>	
Apply: 2:3:2 (22) Zn @ 100g / tree with water basin	3 Times per year
LAN @ 50g / tree	3 times per year
Watering after fertilizer has been applied	After the application of fertilizer
DESCRIPTION	SCHEDULE
8.2.2.13 Filling of eroded surfaces	
Eroded ground areas must be filled and stabilized	Every six months

## 5. THE GUIDELINES ON MACHINERY ALLOCATIONS

AREA
Management and Cleaning Of Ablution facilities (including Marabastad retail Market)
Sanitary management
Platforms and open spaces including Market hall roofs and trussells
1X Intergrated floor ride on scrubber – sweeper*
1 x Industrial ride on street sweeper*
1 x D <b>Compact Battery-Powered Rider Scrubber (deep cleansing and decreasing of hard surfaces and debris)*</b>
1 x walk behind high pressure washer*
1 x Chain saw*

1x Brush cutter*
1 x Lawn mower*
Garden maintenance and horticultural services
Forklift operator
Machine operators
<b>Total</b>

\* Minimum number required

**Table 1: The summary of operational times is depicted in the table below**

Description	Frequency	Operational Times
All public toilets on the market including platforms	Daily	06:00 – 17:00 18:00 – 06:00 (only designated ones)
All market facilities	Daily	07:00 – 17:00
Marabastad	Daily	07:00 – 17:00
Watermelon section	Seasonal (Sept -March	6:00 ---17:00 18:00 --- 6:00

## MACHINES, TOOLS, POWER TOOLS REQUIREMENTS & GUIDELINES

Please note: it is required from the service provider to provide the following items

### **a) Cleaning machines specifications**

#### **I. Ride on industrial street sweeper specifications**

- Cleaning path: 1,680 mm
- Main brush length (tubular): 1,270 mm
- Side broom diameter: 660 mm
- Volume capacity: 850 L
- Debris weight capacity: 907 kg
- Dump height: 1,830 mm
- Vacuum fan speed: 8,500 rpm
- Vacuum diameter: 240 mm
- Must have vacuum wand for far reach areas
- Propel speed forward: 16.0 km/h

#### **II. Ride on industrial sweeper -scrubber integrated**

- Cleaning path: 1,020 mm
- With scrubbing side brush: 1,370 mm
- With sweeping side brush: 1,420 mm
- Brush down pressure: 177 kg
- Brush diameter 300 mm
- Scrubbing brush diameter 410 mm
- Sweeping brush diameter 530 mm
- Solution tank 212 L
- Solution capacity with 280 L
- Recovery tank 276 L
- Debris volume capacity 110 L
- Debris weight capacity 177 kg
- Dump height: 1,520 mm
- Scrubbing fan water lift 890 mm
- Propel speed forward: 13 km/h
- Engine fuel type: diesel
- Ground clearance: 80 mm

#### **III. Compact Battery-Powered Rider Scrubber (deep cleansing and decreasing of hard surfaces and debris)**

- Scrubbing Path (standard): 1,040 mm
- Disk brush speed 325 rpm
- Disk brush down pressure: 14 kg
- Cylindrical brush speed: 600 rpm
- Cylindrical brush down pressure: 91 kg

- Solution tank / 132 L
- Recovery tank 166 L
- Vacuum fan | speed | water lift 0.8 hp / 0.6 kW | 14,500 rpm 1,650 mm
- Lithium-Ion 276 AH (10.2 kWh)

**IV. High pressure washer.**

Pressure: 4200psi / 290bar

Flow: 4.0gpm / 15.1 l/min

**b) Power tools specifications**

- i. Lawn Mower: 190cc
- ii. Brush cutter: 52cc
- iii. Chain saw: 3.9 Kw petrol



**c) Loose tool requirements and guidelines.**

<b>DESCRIPTION</b>	<b>REQUIREMENTS</b>
Broom-Hard	1 per worker
Broom-Soft (in the ablution facility)	1 per worker
Feather dusters- Long	1 per 2 workers
Feather dusters- short	1 per 2 workers
Janitor trolley	1 per 5 workers
Dual system bucket- complete (Wringer, Mop, etc.) water must be changed for every area according to colour coding. Colour coded buckets for Clinics/health facilities	1 per worker
Extendable window squeegee (Minimum 3m)	1 per 2 workers
Step Ladder (Minimum 6 step)	1 per 10 workers
Step ladder (Minimum 4 step)	1 per 6 workers
Cleaning safety signs	Minimum 2 per worker
Garden tools (Spade, fork, garden-rake, scissors, etc.)	One set per 20 workers
Safety clothing with LOGO (Gents 3 piece/Ladies' canteen, shoes, etc.) as well as disposable wear based on area requirement	3 per worker per year on exchange basis due to wear and tear, breakage, etc
Rain Gear, Duffel Coat Waterproof Windbreaker, Reflective Waistcoat with logo and ID Card (For outside work)	1 of each per person per 3 Year contract
Scaffolding is also needed for high reach areas and for removal of spider webs and birds' nests	1 per eight workers

The above must be permanently available. The successful tenderer/s is responsible to replace such items due to wear and tear, breakage, theft, etc.

The contractor must provide adequately for tools, equipment, and machinery to be utilised in the service of the indicated arrears inside and outside the halls.

**6. CONTRACT PERFORMANCE**

**a. General**

Cleaning services shall be provided from Monday to Sunday. Designated 24 hour ablution facilities shall be identified and managed accordingly in terms of the needs of the client

The Client shall not be compelled to provide the following:

- i. Additional installation of additional water and electrical points,
- ii. Machinery charging facilities

Required Supervisor (Full time) Monday to Saturday 07:00 till 16:00 or according to the specific operational hours of the facility in question.

Required number of General Workers (Full time) Monday to Friday 07:30 till 16:00 or according to the specific operational hours of the facility in question.

Frequency of required services as detailed in the scope of work and required loose tools to be included in the labour costs. To ensure thorough cleaning, the moving of items to undertake the requested services, must be incorporated in the price. Supervisor: cleaner ratio may vary according to facility size/service. Average working hours per month is anticipated at 173.33 hours

Administration of all statutory requirements pertaining to supervisor and cleaners, UIF, Provident Fund, Workmen Compensation, Skills Development Levies, Provision for Bonuses, Provision for Overtime, Leave and Sick leave. Etc.

Stand-in cleaner/s whilst regular staff is on holiday, sick leave and maternity leave.

Stand-in cleaner/s in case of strikes, stay away action or any industrial action, etc.

Overalls / uniforms / protective shoes / safety signs, other PPE and safety equipment required etc., transport and related costs.

Step ladders / scaffolding / professional high window cleaning tools and specialized equipment required to clean all windows and hard to reach areas.

Purchase / replacement / repair / rental and maintenance of machinery and equipment.

Equipment not supplied by COT, scaffolding, loose tools, and equipment, etc.

OHS (VME) provision and compliance.

Other costs (fuel, vehicles, insurance, public liability, accounting, bank charges, etc.)

Management cost, profit, etc.

Verifiable proof of payment of personnel salaries must be submitted seven days after the payment of salaries by the contractor monthly basis.

### **Contractor responsibilities**

The Contractor shall ensure the following:

- Correct number of staff is deployed daily to ensure efficiency and in terms of the agreed service schedule.
- All employees are trained to enable them to perform their duties.
- Adequate, relevant, and safe equipment's are provided to ensure the service is rendered effectively. All defective equipment's are to be repaired or replaced immediately.
- All employees are aware of the (Pty) LTD policy to prosecute any person who commits theft, irrespective of the value of the merchandise stolen, including eating produce.
- Cleaning schedules are prepared for all operations to ensure that the facilities are cleaned according to agreed schedule.
- A cleaning inspection register is maintained by adequately trained person where all adverse inspection reports are recorded as well as comment on corrective action. The register will be held on site.

- An adequately trained person must inspect cleaning and hygiene standards daily and cause adverse findings to be immediately rectified
- Contractor Site Supervisor and Operations Manager (TFPM) to jointly inspect the facility once a week and record adverse findings in the Cleaning Inspection register
- The site Supervisor and Senior Manager from the Contractor will jointly inspect the site once a month. All adverse findings and corrective action to be recorded in the Cleaning Inspection Register
- Ensure that all staff wears approved uniforms and personal protective equipment's.
- Uniforms shall have reflectors. The location of the reflectors shall be agreed upon with the Client.

**b. Cleaning inspection reports**

- Monthly joint Cleaning Audit Inspection shall be conducted by the Client and the Contractor on days to be determined by the Quality Assurance Unit. The aim of the audit is to ensure compliance to specified standards.
- The completed Cleaning Audit Inspection Report shall be signed by both the Contractor's Cleaning/Site Manager or Supervisor and the Client prior to being received by the Client.
- The overall acceptable standard of performance shall be **90%**.
- The Contractor shall be expected to adhere to or exceed the performance standard. Failure to comply with this requirement will result the contract penalties (see item 5.3 below).
- The report shall individually mark the task to be conducted and indicate a rating/overall assessment.
- A copy of this signed, completed report must be filed in and the filed kept in the Operations Managers' office, available for inspection by Quality Assurance Team.
- The Quality inspection report as well as checklist should be used amongst other documents as part of an ongoing contractor appraisal

**c. Contractor penalties**

- In the event of TFPM receiving unacceptable standards, a first warning letter shall be issued, advising on details of substandard performance by the Contractor and also requesting that an action plan showing how the Contractor will improve the situation be submitted.
- Where unacceptable standards are experienced for two consecutive months, a warning letter, advising details of substandard performance shall be issued to the Contractor, giving the contractor one calendar month to rectify the problem.
- In the event of TFPM receiving an unacceptable standard for the third consecutive month, one-month notice will be given terminating the agreement and a new contractor appointed

**d. Cleaning programmes and schedules**

- a) The Contractor shall create a cleaning programme which shall indicate (but not limited to) the locations, dates, frequency, type of operation, cleaning chemicals and equipment's used for the cleaning operation.
- b) The said programme shall ensure that every area of the market is cleaned at the correct frequency.
- c) The market reserves a right to change frequencies if in doubt that acceptable high standards are achieved using specified frequencies.
- d) The programme shall detail cleaning contractor responsibilities and should outline procedures.
- e) The cleaning programme should be designed in such a way that it ensures high standards of hygiene required in a food industry
- f) Cleaning duties should be broken down into specific task lists for each individual cleaner.
- g) Each cleaner shall receive written cleaning instructions.
- h) The cleaning instructions should contain all relevant information for that cleaner to successfully carry out the cleaning specifications and should be clear and be able to be understood by the cleaner.
- i) The Contractor shall ensure that cleaners are always available throughout the day to remove all litter in accessible areas, maintaining cleanliness and to mop spillages as they occur in all areas.

e. **Cleaning equipment's**

- A full inventory of the proposed new equipment to be used must be supplied as part of the contract and maintained up to date. The machinery listing must be filed in the contract-cleaning file.
- The Contractor shall submit a service plan for all machinery.
- The plan and service records shall be kept on file on site
- Contractors will be responsible for maintenance of all equipment's used for cleaning. A replacement shall be immediately provided for all faulty equipment's.
- The Client shall not be held liable for theft or damage to material or equipment's.
- Cleaning equipment must be cleaned and neatly stored on completion of each shift.
- Equipment, as listed on the machinery list must remain on site
- Contractor is responsible for supplying cleaning materials and equipment

f. **Cleaning materials and specifications**

In order to ensure cost effective and optimal hygiene and cleanliness standards at the market, the Contractor shall use cleaning materials which are **SABS approved** or approved by other recognized accreditation bodies.

g. **Equipment storage facilities**

Equipment storage:

- The Contractor shall provide shelves to the storage area for storing cleaning equipment and shall also ensure that the area is kept in a clean and neat condition.
- Sweeping and mopping equipment to be stored in a hanging position. Heads down, so as not to contaminate the handles.
- All cleaning equipment must be thoroughly cleaned prior storage.
- The equipment and consumables storage is to be kept in a clean and tidy condition.
- The Contractor may request change room facilities and office space at an additional cost.
- Equipment and cleaning material storage facility shall be provided. The Client shall not be responsible for ensuring safe keeping of cleaning equipment's and material

#### **h. Record keeping**

The cleaning contract file, which shall be site, shall consist of but not limited to the following:

- Staff structure
- Names of all people on site
- Proof of induction and training of staff on site
- List of cleaning contractor's emergency contact details.
- A letter of good standing with the Compensation Commissioner.
- Task sheets detailing contractor's area of responsibility.
- Cleaning Inspection reports.
- Schedules of inspections
- Machinery maintenance records
- Records of inspections
- MSDS (Material Safety Data Sheets) for all chemicals.

#### **i. Monthly service audits and inspections**

- Monthly joint Audit Inspection shall be conducted by the Client and the Contractor on days to be determined by the Quality Assurance Unit. The aim of the audit is to ensure compliance to specified standards.
- The completed Cleaning Audit Inspection Report shall be signed by both the Contractor's Cleaning/Site Manager or Supervisor and the Client prior to being received by the Client.
- The overall acceptable standard of performance shall be **90%**.
- The Contractor shall be expected to adhere to or exceed the performance standard. Failure to comply with this requirement will result the contract penalties.

- The report shall individually mark the task to be conducted and indicate a rating/overall assessment.

j. **Communication and coordination of activities**

Regular communication between TFPM operations manager and the contractor is essential. The following sequence of meetings is recommended to ensure implementation according to specifications.

- a) **Daily** – Contract Supervisor, FPM cleaning supervisors to review standards of work
- b) **Weekly** – Contract Area manager and FPM cleaning supervisors to discuss operational issues
- c) **Monthly** – Cleaning contractor Senior Manager and TFPM Functional head to discuss overall cleaning operation

k. **Personnel and related matters**

The Contractor is responsible for ensuring that all staff members are fully trained prior to commencing at work.

Record of such training shall be kept on file.

All staff members shall be paid at the rates not lower than those stipulated in labour legislation.

The Contractor shall comply with all labour related legislations.

The Contractor shall ensure that all staff members are fully trained prior to commencing their duties.

Proof of such training and the contents thereof shall be kept on file.

The training shall include, but not be limited to the following:

- General and specific cleaning, dust sweeping, wet mopping, scrubbing with automatic scrubbers, safe use and fault-finding of equipment's, storage of equipment, proper use of cleaning chemicals.
- Supervisor: Communication with the Client, inspections, adherence to the task sheet specifications, ordering of consumables and cleaning chemicals, staff management, absenteeism, misconduct, negligence and dishonesty.
- Training as required by the Occupational Health and Safety Act, No. 85 of 1993.

l. **Security**

- The Contractor shall ensure that assets and produce belonging to the Client's Tenants are not stolen or damaged by its employees. The Client shall not be held responsible for theft or loss or damage of any such items or assets.
- The contractor is required to conform to all existing security arrangements and regulations required by TFPM
- The contractor is required to conform to all existing security arrangements and regulations required by the Client.

m. **Payment for services rendered**

- Invoices should be invoiced monthly after work has been complete.
- The purchase order number and the name of the facility must be indicated separately on the invoice.
- All job cards and attendance registers should be signed off by the identified COT Department representative at the facility/site and attached to the relevant invoice.
- If the job card and any other support documents are not signed off by the COT representative, or not attached to the invoice, the invoice will not be paid and shall be referred to the service provider for rectification.

## 7. STAGES OF EVALUATION

The tender will be evaluated under four stages

### STAGE 1: ADMINISTRATIVE COMPLIANCE

### STAGE 2: MANDATORY REQUIREMENTS

### STAGE 3: FUNCTIONAL CRITERIA

### STAGE 4: PREFERENTIAL POINT SYSTEM

### STAGE 1: ADMINISTRATIVE COMPLIANCE

All the proposals will also be evaluated against the administrative responsiveness requirements as set out in the [list of returnable documents](#).

### STAGE 2: MANDATORY REQUIREMENTS

- Provide letter of good standing from Department of Labour
- Bidders must submit Detailed Health and safety plan indicating the OHS/A compliance in office working environment

### STAGE 3: FUNCTIONAL CRITERIA

**Service Providers must submit the necessary documents to be evaluated for functionality as per the Bid Evaluation Criteria.**

Bids that do not achieve a minimum of 70 for functionality will not be considered for further evaluation.

EVALUATION CRITERIA	Sub criteria	SCALE	WEIGHT	TOTAL POINTS
Client References/ completion certificates  (Completion certificates—reference letters should be on 'company letterhead' (where services were	1 to 2			
	completion	6		
	certificates	8	5	50
		10		

rendered) and signed for similar work done by the service provider	3 to 4 completion certificates			
	5 or more completion certificates			
<b>Staff Capability</b> Indicate- Qualification and experience of each Supervisor to be assigned	2 Employees with more than 3 years' experience	3		
	3 Employees with more than 3 years' experience	5	5	35
	4 or more Employees with more than 3 years' experience	7		
<b>Local Economic Participation</b> <b>Local of Business,</b> <b>(Proof of municipal rates and taxes account or a valid lease agreement should be provided or proof of company's registration address)</b>	- Company located within the Tshwane boundaries	3		
	- Company located in Gauteng outside Tshwane boundaries	2	5	15
	- Company located outside Gauteng boundaries	1		
<b>Total</b>				<b>100</b>



## **STAGE 4: PREFERENTIAL PROCUREMENT POINT SYSTEM**

The preferential points to be used will be 80/20 points system in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

The system comprises of the following two elements:

- a) Price 80 points
- b) BEEE Contributor level 20 points

### **8. PRICING SCHEDULE**

1. The prices to be inserted in the Price Schedule are to be full inclusive prices for the work described under the items. Such prices shall cover all costs and expenses that may be required in and for the execution of the work described, and shall cover the cost of all general risks, liabilities, equipment's, labour, tools, consumables and obligations set forth or implied in the documents on which the tender is based, as well as overhead charges and profit. Reasonable prices shall be inserted as these will be used as a basis for assessment of payment for additional work that may have to be carried out.
2. The bidder must complete all sub-items in the pricing schedule to be evaluated for the item.
3. All items quoted are for a single unit or as specified in the price schedule.
4. An item against which no price is entered will be disqualified under the item unless the Tenderers clearly indicate if the price is "included under item number...." or "provided elsewhere under item number..." will be accepted as a price of nil (R0,00) having been entered against such items and covered by the other prices in the Price Schedule only if clearly indicated under which item number it has been covered under.
5. Any work executed to which such a price applies, shall be measured under the appropriate items in the Price Schedule and valued at a price of nil (R0,00). The rate of nil shall be valid irrespective of any change in the quantities during the execution of the Contract/service level agreement.
6. The Tenderer shall fill in a unit price in rand against all items for each of the three (3) years in the respective item row and column. The intention is that the price shall apply should work under this item be required.
7. The tenderer shall not group together several items and tender one price for such group of items.
8. All prices and sums of money quoted in the Price Schedule shall be in rands and whole cents. Fractions of a cent shall be discarded.
9. All prices entered in the Price Schedule must exclude VAT as indicated. VAT will be added last on the summary row of the Price Schedule as indicated.
10. Should excessively high unit prices be tendered, such prices may be of sufficient importance

The items in the pricing schedule refer to the scope of works and SCHEDULE OF SERVICES TO BE PROVIDED AT TSHWANE MARKET AND MARABASTAD RETAIL FACILITIES/SITES.

**PRICING SCHEDULE**

ITEMS	Description	R/m2
1.1	FLOOR MAINTENANCE(CLEANING) –PLATFORMS AND OPEN SPACE	R
1.2	WALLS, FENCING, TRUSSELS AND ROOFS	R
		R/toilet facility cubicles and immediate outside surroundings
2.1	CLEANING AND MANAGEMENT OF ABLUTION FACILITIES	R
2.2	PROVISION OF SANITARY SERVICES	R
		R/m <sup>2</sup>
3.1	HORTICULTURAL AND GARDEN MAINTENANCE	R
		R/tree
3.2	TREE FELLING	R
3.3	TREE PRUNING	R
	<b>TOTAL</b>	R
	<b>15% VAT</b>	R
	<b>GRAND TOTAL</b>	R

**9. TYPE OF AGREEMENT REQUIRED**

A Service Level Agreement will be entered into after the appointment.

**10. VALIDITY PERIOD**

- a) The validity period for the tender after closure is 90 days. CoT shall have right and power to extent any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalised while the quotations/bids are still valid.

## 11. MARKET ANALYSIS

The city of Tshwane reserves the right to conduct market analysis. Should the city exercise this option, where a tenderer offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the tenderer if they will be able to deliver on the price, if a tenderer confirm that they cannot, the tenderer will be disqualified on the basis of being non-responsive. On confirmation by the bidder, a tight contract to mitigate the risk of non-performance will be entered into with the service provider.

Further action on failures by the supplier to deliver will be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers. The city further reserves the right to negotiate a market related price with a tenderer scoring the highest points. If the tenderer does not agree to a market-related price, the city reserves the right to negotiate a market-related price with the tenderer scoring the second highest points, if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points. If a market-related price is not agreed, the city reserves the right to cancel the tender

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	ED 10 -2022/23	CLOSING DATE:	24 February 2023	CLOSING TIME:	10:00
DESCRIPTION	<b>TENDER TO APPOINT SERVICE PROVIDER/S FOR THE PROVISION OF CLEANING AND RELATED SERVICES AT MAIN FRESH PRODUCE MARKET AND MARABASTAD RETAIL MARKET FOR A PERIOD OF THREE (3) YEARS</b>				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

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

City of Tshwane Metropolitan Municipality: Tshwane House					
Supply Chain Management					
320 Madiba Street					
Pretoria CBD					
0001					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes  <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	DEPARTMENT	Economic Development
CONTACT PERSON	Kgomotso Makgale	CONTACT PERSON	Thembi Makipi
TELEPHONE NUMBER	012 358 5478	TELEPHONE NUMBER	012 358 2341/2352
EMAIL ADDRESS	<a href="mailto:Kgomotsomakg@tshwane.gov.za">Kgomotsomakg@tshwane.gov.za</a>	EMAIL ADDRESS	<a href="mailto:Thembima@tshwane.gov.za">Thembima@tshwane.gov.za</a>

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

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

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

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

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

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

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

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

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

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

\* Delete if not applicable

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

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

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

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

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

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

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



**PRICE ADJUSTMENTS**

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

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

**DECLARATION OF INTEREST**

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

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

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

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

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

3.9.1 If yes, furnish particulars. ....

.....

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

3.10.1 If yes, furnish particulars. ....

.....

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

3.11.1 If yes, furnish particulars. ....

.....

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

3.12.1 If yes, furnish particulars. ....

.....

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

3.13.1 If yes, furnish particulars. ....

.....

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

3.14.1 If yes, furnish particulars: .....

.....

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

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

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

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

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

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

.....  
.....

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

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

2.2 If yes, provide particulars.

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

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? **\*YES / NO**

3.1 If yes, furnish particulars

.....  
.....

4.1 Will any portion of goods or services be sourced from outside **\*YES / NO**

the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

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

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

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

**1. GENERAL CONDITIONS**

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

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

1.2 The value of this bid is estimated **not to exceed** R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

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

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



## 2. DEFINITIONS

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

is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

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

### **3. ADJUDICATION USING A POINT SYSTEM**

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

- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR PRICE

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

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

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

or

Where

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

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

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

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

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

B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

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

## 6. BID DECLARATION

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

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

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

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

## 8. SUB-CONTRACTING

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

*(Tick applicable box)*

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

8.1.1. If yes, indicate:

- i) What percentage of the contract will be subcontracted .....%
- ii) The name of the sub-contractor .....
- iii) The B-BBEE status level of the sub-contractor .....

iv) Whether the sub-contractor is an EME.

**(Tick applicable box)**

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

**9. DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm: .....

9.2 VAT number: .....

9.3 Company registration number: .....

**9.4 TYPE OF COMPANY/ FIRM**

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

[TICK APPLICABLE BOX]

**9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

**9.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

**9.7 MUNICIPAL INFORMATION**

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

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

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

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

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

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

WITNESSES	
1.	.....
2.	.....

.....	
SIGNATURE(S) OF BIDDERS(S)	
DATE	.....
ADDRESS:	.....
	.....
	.....

**CONTRACT FORM: RENDERING OF SERVICES**

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **ED 10 2022/23** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.

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

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE: .....	



**CONTRACT FORM: RENDERING OF SERVICES**

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

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

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

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....

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

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

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

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

**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: **ED 10 2022/23**

**TENDER TO APPOINT SERVICE PROVIDER/S FOR THE PROVISION OF CLEANING AND RELATED SERVICES AT MAIN FRESH PRODUCE MARKET AND MARABASTAD RETAIL MARKET FOR A PERIOD OF THREE (3) YEARS**

(Bid Number and Description)

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

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

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

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# **THE NATIONAL TREASURY**

**Republic of South Africa**



---

**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

# GENERAL CONDITIONS OF CONTRACT

July 2010

### NOTES

The purpose of this document is to:

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

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

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



## TABLE OF CLAUSES

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

## General Conditions of Contract

### 1. Definitions

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

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

**1. Application**

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

**3. General**

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

- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Inspections, tests and analyses**
- 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

- 11. Insurance** 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services, services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

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

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

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated



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

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

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

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

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

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
<b>26. Termination for insolvency</b>	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
<b>27. Settlement of Disputes</b>	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, <ul style="list-style-type: none"> <li>(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and</li> <li>(b) the purchaser shall pay the supplier any monies due the supplier.</li> </ul>
<b>28. Limitation of liability</b>	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; <p>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</p> <p>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.</p>
<b>29. Governing language</b>	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

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

# SERVICE-LEVEL AGREEMENT

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

AND

---

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

Doc2    Version 1    3 March 2017

**SERVICE-LEVEL AGREEMENT**

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

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

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

**AND**

\_\_\_\_\_

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

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

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

## **CONTENTS**

- 1. DEFINITIONS**
- 2. INTERPRETATION**
- 3. APPOINTMENT**
- 4. PURPOSE OF THE AGREEMENT**
- 5. RELATIONSHIP**
- 6. DURATION**
- 7. CONTACT PERSON**
- 8. SCOPE OF GENERAL SERVICES**
- 9. PRICE AND PAYMENT**
- 10. PRICE RESTRUCTURING**
- 11. SERVICE LEVELS**
- 12. WITHHOLDING OF PERFORMANCE**
- 13. PENALTY**
- 14. ACCESS**
- 15. ORDERS OF GOODS**
- 16. DELIVERY OF GOODS**
- 17. DEFECTIVE GOODS OR LATENT PRODUCTS**
- 18. AMENDMENT OR CANCELLATION OF PURCHASE ORDER**
- 19. INSPECTION**
- 20. MAINTENANCE AND SUPPORT**
- 21. TRAINING**
- 22. SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES**
- 23. SERVICE PROVIDER'S PERSONNEL**
- 24. STATUTORY AND EMPLOYMENT ISSUES**
- 25. SUBCONTRACTING**
- 26. CONFIDENTIALITY**

27. **INTELLECTUAL PROPERTY RIGHTS**
28. ***FORCE MAJEURE***
29. **CESSION**
30. **CHANGE OF CONTROL OR CIRCUMSTANCE**
31. **BREACH**
32. **EARLY TERMINATION**
33. **DISPUTES**
34. **LAWS AND JURISDICTION**
35. **NOTICES AND COMMUNICATION**
36. **GENERAL AND MISCELLANEOUS**
37. **EXECUTION**

**ANNEXURE A: BOARD RESOLUTION**

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

**ANNEXURE C: PAYMENT TERMS**

## **RECORDAL:**

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

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

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

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

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

### **1. DEFINITIONS**

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

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



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

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

## **2. INTERPRETATION**

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

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

### **3. APPOINTMENT**

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

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

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

### **5. RELATIONSHIP**

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

## **6. DURATION**

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

## **7. CONTACT PERSON**

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

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

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

## **9. PRICE AND PAYMENT**

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

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

**10. PRICE RESTRUCTURING**

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

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

- 10.4 If the service provider fails to do so or cannot legally do so, the City may –
- 10.4.1 acquire the services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of the City and the service provider hereunder shall be reduced accordingly;
  - 10.4.2 terminate this agreement without any penalty, liability or further obligation; or
  - 10.4.3 continue under this agreement.
- 10.5 Within 30 (thirty) calendar days of a notice by the City or at any time the City so requests, the service provider shall certify in writing to the City that it is in compliance with this clause and shall provide all information that the City reasonably requests in order to verify such compliance.

## **11. SERVICE LEVELS**

- 11.1 The service provider recognises that the City has entered into this agreement relying specifically on the service provider's representations regarding service levels including, *inter alia* –
- 11.1.1 capacity allocations in accordance with the service to be provided; and
  - 11.1.2 all work to be performed and services rendered under this agreement shall comply with industry norms and best practice acceptable within the services industry and shall be executed by the service provider to the total satisfaction of the City.
- 11.2 The service provider shall provide suitably qualified and trained employees to provide the services to the City in terms of this agreement, and shall allocate, in its discretion, employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the service provider shall not negatively impact the provision of the services by the service provider to the City. The service provider shall also allocate employees with the technical skill and knowledge on-site at the City at all times during normal working hours, if the City so requires.
- 11.3 Among others, the service provider shall comply with and provide the services as set out in Clause 8 above.

## **12. WITHHOLDING OF PERFORMANCE**

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

### **13. PENALTY**

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

### **14. ACCESS**

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

## **15. ORDERS OF GOODS**

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

## **16. DELIVERY OF GOODS**

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

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

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

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

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

## **19. INSPECTION**

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



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

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

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

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

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

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

19.6 The inspection contemplated in this agreement will be conducted –

19.6.1 during normal business hours; and

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

## **20. MAINTENANCE AND SUPPORT**

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

## **21. TRAINING**

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

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

### **22.1 Service warranties**

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

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

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

## **22.2 Indemnity**

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

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

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

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

### **23.2 Character of employees**

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

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

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

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

24.1 The service provider shall comply with all employment legislation

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

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

### **24.2 No employment**

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

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

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

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

## **25. SUBCONTRACTING**

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

## **26. CONFIDENTIALITY**

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

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

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

## **27. INTELLECTUAL PROPERTY RIGHTS**

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

- 27.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the contractor shall, at its discretion and within 30 (thirty) days of the services having been found to infringe, at its own cost, –
- 27.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement;
  - 27.7.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement;
  - 27.7.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
  - 27.7.4 withdraw the subject of infringement.

## **28. FORCE MAJEURE**

- 28.1 For the purposes hereof, “*force majeure*” shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming *force majeure* and comprehended in the terms thereof.
- 28.2 If *force majeure* causes delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement shall be suspended for the period agreed in writing between the parties.
- 28.3 In the event of circumstances arising which the other party believes that it constitutes a *force majeure* (“the affected party”), such affected party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other party. The parties shall agree, in writing, to suspend the implementation of this agreement for a specific period (“agreed period”).
- 28.4 In the event that both parties reasonably believe that the affected party shall be unable to continue to perform its obligations after the agreed period, either party shall be entitled to terminate this agreement without further notice to the other party.
- 28.5 The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this agreement by a period equal to the time that its performance is so prevented.

## **29. CESSION**

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

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

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

### **31. BREACH**

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

### **32. EARLY TERMINATION**

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



### **33. DISPUTES**

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

33.1.1 the interpretation of the agreement;

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

33.1.3 any of the parties' rights and obligations;

33.1.4 any procedure to be followed;

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

33.1.6 the rectification or repudiation of this agreement,

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

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

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

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

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

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

33.5 If the arbitration is –

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

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

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

**34. LAWS AND JURISDICTION**

34.1 This agreement shall be governed by and interpreted according to the law of the Republic of South Africa.

34.2 Each party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this agreement, including its termination. Each party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (in Pretoria)).

**35. NOTICES AND COMMUNICATION**

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

35.1.1 The City:

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

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

35.1.2 The service provider:

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

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

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

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

## **36. GENERAL AND MISCELLANEOUS**

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

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

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

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

### **36.3 Waivers**

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

**36.4 Survival of obligations**

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

**36.5 Approvals and consents**

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

**37. EXECUTION**

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

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

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

Witnesses:

1. ....

2. ....

**For and on behalf of the City of  
Tshwane Metropolitan  
Municipality  
(Duly represented by  
Mr. Johnathan Mettler)**

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

Witnesses:

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

For and on behalf of

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

**(duly represented by**

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

**ANNEXURE A**

**RESOLUTION OF THE BOARD**

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

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

**RESOLVED:**

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

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

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

**CHAIRPERSON/COMPANY SECRETARY**