

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA		Provincial Supply Chain Management								
		Request for Proposal			Page 1 of 4					
RFP NUMBER										
RFP DESCRIPTION										
CUSTOMER DEPARTMENT										
CUSTOMER INSTITUTION										
BRIEFING SESSION	Y		N		SESSION COMPULSORY		Y		N	
					SESSION HIGHLY RECOMMENDED		Y		N	
BRIEFING VENUE					DATE			TIME		
COMPULSORY SITE INSPECTION	Y		N		DATE			TIME		
INSPECTION ADDRESS										
TERM AGREEMENT CALLED FOR?	Y		N		TERM DURATION					
CLOSING DATE					CLOSING TIME					
TENDER BOX LOCATION										
GPT is acting as Common Service Provider or buying organisation on behalf of all Gauteng Provincial Government Customer Departments / Institutions. The goods / services are therefore required by the Customer Department / Institution, as indicated on this form RFP 01.										

Notes:

- All bids / tenders must be deposited in the Tender Box at the following address:
Gauteng Provincial Treasury, Imbumba House, 75 Fox Street, Marshalltown, Johannesburg
- Bids / tenders must be deposited in the Tender Box on or before the closing date and time.
- Bids / tenders submitted by fax will not be accepted.
- The GPT Tender Box is generally open 24 hours a day, 7 days a week.
- This bid is subject to the preferential procurement policy framework act, 2000 and the preferential procurement regulations, 2022, the general conditions of contract (gcc) 2010 and, if applicable, any other special conditions of contract.
- ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL GPG RFP FORMS – (NOT TO BE RE-TYPED)
- ALL REQUIRED INFORMATION MUST BE COMPLETED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED):

The Tendering System

The RFP Pack consists of one part namely, Section 1. This section must be submitted and clearly marked with the Tender Number and the Section Number.

Training sessions

Non-compulsory "How to tender" workshops are held every Wednesday at 75 Fox Street from 10:00-13:00.



Provincial Supply Chain Management

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PART A INVITATION TO BID

SUPPLIER INFORMATION

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

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

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



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Request for Proposal

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Tender documents can be obtained from <http://www.treasury.gpg.gov.za>

ANY ENQUIRIES REGARDING BIDDING PROCEDURE MAY BE DIRECTED TO:

DEPARTMENT	
CONTACT PERSON	
TELEPHONE NUMBER	
FACSIMILE	
E-MAIL ADDRESS	

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

DEPARTMENT	
CONTACT PERSON	
TELEPHONE NUMBER	
FACSIMILIE	
E-MAIL ADDRESS	



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PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

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

2. TAX COMPLIANCE REQUIREMENTS

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

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

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

RETURNABLE ATTACHMENT



GAUTENG PROVINCE

TREASURY
REPUBLIC OF SOUTH AFRICA

PERSONAL INFORMATION PROCESSING FORM

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

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

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

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

Privacy Laws Compliance Clause

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

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

Signed by: _____

ID Number: _____

Signature: _____

Designation: _____

Date: _____



GAUTENG PROVINCE
PROVINCIAL TREASURY
REPUBLIC OF SOUTH AFRICA

Provincial Supply Chain Management

RFP Point System

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RFP NUMBER		CLOSING DATE	
VALIDITY OF RFP		CLOSING TIME	

In case of queries, please contact the GPT Contact Centre at tel: 0860 011 000

*GPT is acting as Common Service Provider or buying organisation on behalf of all Gauteng Provincial Government Customer Departments / Institutions.

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

The Gauteng Provincial Government requests your bid on the goods and/or services listed on the attached forms. Please furnish all information as requested and return your bid on the date stipulated. Late bids will not be accepted for consideration.

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

Point System

Points SHALL be allocated as follows:

Points for

Points for

TYPE OF CONTRACT (COMPLETED BY PROJECT MANAGER)

VALUE BASED

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



Provincial Supply Chain Management

Instructions to Bidders

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1. The RFP (Request for Proposal) Pack is drawn up so that certain essential information should be furnished in a specific manner. Any additional particulars shall be furnished in a separate annexure.
2. The RFP forms should not be retyped or redrafted, but photocopies may be prepared and used. Additional offers may be made for any item, but only on a photocopy of the page in question or on other forms obtainable from the relevant Department or Institution advertising this RFP. Additional offers made in any other manner may be disregarded.
3. Should the RFP forms not be filled in by means of electronic devices, bidders are encouraged to complete forms in a black ink.
4. Bidders shall check the numbers of the pages and satisfy themselves that none are missing or duplicated. No liability shall be accepted with regards to claims arising from the fact that pages are missing or duplicated.
5. The forms RFP 04 to RFP 09 and PREF documents shall be completed, signed and submitted with the bid. RFP 10 (National Industrial Participation Programme Form) will only be added to the RFP pack to be completed by bidders when an imported component in excess of US \$ 10 million is expected.
6. A separate RFP 06 form (RFP Price Schedule per item) shall be completed in respect of each item. Photocopies of this form may be prepared and used or additional copies, (if required) are obtainable from the relevant Department or Institution advertising this RFP(not applicable for Pre-qualification of Bidders).
7. Firm delivery periods and prices are preferred. Consequently bidders shall clearly state whether delivery periods and prices will remain firm or not for the duration of any contract, which may result from this RFP, by completing RFP 06 (RFP Price Schedule per item) and RFP 07 (Non-Firm Prices per item) (not applicable for Pre-qualification of Bidders).
8. If non-firm prices are offered bidders must ensure that a separate RFP 07 (Non-Firm Prices per item) is completed in respect of each item for which a non-firm price is offered. Photocopies of this form may be prepared and used or additional copies, (if required) are obtainable from the relevant Department or Institution advertising this RFP (not applicable for Pre-qualification of Bidders).
9. Where items are specified in detail, the specifications form an integral part of the RFP document (see the attached specification) and bidders shall indicate in the space provided whether the items offered are to specification or not (not applicable for Pre-qualification of Bidders).
10. In respect of the paragraphs where the items offered are strictly to specification, bidders shall insert the words "as specified" (see the attached specification) (not applicable for Pre-qualification of Bidders).
11. In cases where the items are not to specification, the deviations from the specifications shall be indicated (see the attached specification).
12. In instances where the bidder is not the manufacturer of the items offered, the bidder must as per RFP 06 (RFP Price Schedule per item) submit a Letter of Supply from the relevant manufacturer or his supplier (not applicable for Pre-qualification of Bidders).
13. The offered prices shall be given in the units shown in the attached specification, as well as in RFP 06 (RFP Price Schedule per item) (not applicable for Pre-qualification of Bidders).
14. With the exception of imported goods, where required, all prices shall be quoted in South African currency. Where bids are submitted for imported goods, foreign currency information must be supplied by completing the relevant portions of RFP 06 (RFP Price Schedule per item) and RFP 07 (Non-Firm Prices per item) (not applicable for Pre-qualification of Bidders).
15. Unless otherwise indicated, the costs of packaging materials (if applicable) are for the account of the bidder and must be included in the bid price on RFP 06 (RFP Price Schedule per item) (not applicable for Pre-qualification of Bidders).
16. Delivery basis (not applicable for Pre-qualification of Bidders):
 - (a) Supplies which are held in stock or are in transit or on order from South African manufacturers at the date of offer shall be offered on a basis of delivery into consignee's store or on his site within the free delivery area of the bidder's centre, or carriage paid consignee's station, if the goods are required elsewhere.
 - (b) Notwithstanding the provisions of paragraph 16(a), offered prices for supplies in respect of which installation / erection / assembly is a requirement, shall include ALL costs on a "delivered on site" basis, as specified on RFP 06 (RFP Price Schedule per item).
17. Unless specifically provided for in the RFP document, no bids transmitted by facsimile or email shall be considered.
18. Failure on the part of the bidder to sign any of the forms RFP 04 to RFP 10 and PREF documents and thus to acknowledge and accept the conditions in writing or to complete the attached RFP forms, Preference documents, questionnaires and specifications in all respects, may invalidate the bid.
19. Bids should preferably not be qualified by the bidder's own conditions of bid. Failure to comply with these requirements (i.e. full



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Instructions to Bidders

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acceptance of the General Conditions of Contract or to renounce specifically the bidder's own conditions of bid, when called upon to do so, may invalidate the bid.

20. In case of samples being called for together with the bid (refer to RFP 05 in this regard), the successful bidder may be required to submit **pre-production samples** to the South African Bureau of Standards (SABS) or such testing authority as designated at the request of the relevant Department concerned. Unless the relevant Department decides otherwise, pre-production samples must be submitted within thirty (30) days of the date on which the successful bidder was requested to do so. Mass production may commence only after both the relevant Department and the successful bidder have been advised by the SABS that the pre-production samples have been approved.
21. Should the pre-production samples pass the inspections / tests at the first attempt, the costs associated with the inspections / tests will be for the account of the relevant Department. If the SABS or such testing authority as designated do not approve the pre-production samples, but requires corrections / improvements, the costs of the inspections / tests must be paid by the successful bidder and samples which are acceptable in all respects must then reach the SABS or such testing authority as designated within twenty-one (21) days of the date on which the findings of the SABS or such testing authority as designated were received by the successful bidder. Failure to deliver samples within the specified time and to the required standards may lead to the cancellation of the intended contract.
22. In case of samples being called for together with the bid (refer to RFP 05 in this regard), the samples must be submitted together with the bid before the closing time and date of the RFP, unless specifically indicated otherwise. Failure to submit the requested sample(s) before the closing time and date of the RFP may invalidate the bid.
23. In cases where large quantities of a product are called for, it may be necessary for the relevant item to be shared among two (2) or more suppliers.
24. In cases where the relevant Department or Institution advertising this RFP may deem it necessary, a formal contract may be entered into with the successful bidder, in addition to a Letter of Acceptance and / or purchase order being issued.
25. If any of the conditions on the RFP forms are in conflict with any special conditions, stipulations or provisions incorporated in the bid invitation, such special conditions, stipulations or provisions shall apply.
26. This RFP is subject to the General Conditions of Contract and re-issues thereof. Copies of these conditions are obtainable from any office of the Gauteng Provincial Government (GPG).
27. Each bid must be submitted in a separate, sealed envelope on which the following must be clearly indicated:
 - NAME AND ADDRESS OF THE BIDDER;
 - THE BID (RFP) NUMBER; AND
 - THE CLOSING DATE.

The bid must be deposited or posted;

 - posted to Gauteng Provincial Treasury and to reach the destination not later than the closing time and date; OR
 - deposited in the tender box of the Gauteng Provincial Treasury before the closing time and date.
28. The Gauteng Provincial Government has become a member and as such a key sponsor of the Proudly South African Campaign. GPG therefore would like to procure local products of a high quality, produced through the practise of sound labour relations and in an environment where high environmental standards are maintained. In terms of the Proudly South African Campaign South African companies are encouraged to submit interesting and innovative achievements in the manufacturing field (if relevant to this RFP) – including information on new products, export achievements, new partnerships and successes and milestones.
29. **Compulsory GPG Contract:** It is a mandatory requirement that successful bidder/s (to whom a tender is awarded) sign a GPG Contract upon award of any given contract.

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BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state?

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

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

Full Name	Identity Number	Name of State institution

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

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

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

- 2.2.1 If so, furnish particulars:

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

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

- 2.3.1 If so, furnish particulars:

3. DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 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.

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
 Filename:RFP4GPT (SBD4)

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

3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

Signature		Date	
Position		Name of Bidder	



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 PROVINCIAL TREASURY
 REPUBLIC OF SOUTH AFRICA

Provincial Supply Chain Management

Special Conditions

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RFP NUMBER	
RFP DESCRIPTION	
CUSTOMER DEPARTMENT	
CUSTOMER INSTITUTION	

THE FOLLOWING MUST ACCOMPANY YOUR BID, IF INDICATED BY “√”

Samples	SABS /Equivalent Certificate May not be older than one (1) year, the cost of which will be for the account of the bidder.	Bidders Briefing Session
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EVALUATION METHODOLOGY

Bidders must complete Compulsory documents and attach it to their tender document, failing which the tender shall not be considered for Stage 1 evaluation.

Points will be awarded in accordance with the Preferential Procurement Policy Framework Act (PPPFA)

Stage 1

Criteria for Functionality	Points
TOTAL	

Bidders are required to use an envelope bidding system, whereby the Technical Proposal (Stage 1) will be placed in a sealed and marked envelope :

- **Stage One**—

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SUPPLIER JOB CREATION ANALYSIS

Company Name		Date Est.	
--------------	--	-----------	--

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

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

Comments to include:

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

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

=====

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

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	TERMS OF REFERENCE TO APPOINT A PANEL OF EXTERNAL LEGAL SERVICE PROVIDERS TO RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL GOVERNMENT DEPARTMENTS AND ENTITIES FOR A PERIOD OF 36 MONTHS	Page: 1 of 25

COVER PAGE

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	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
	TERMS OF REFERENCE TO APPOINT A PANEL OF EXTERNAL LEGAL SERVICE PROVIDERS TO RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL GOVERNMENT DEPARTMENTS AND ENTITIES FOR A PERIOD OF 36 MONTHS	Page: 2 of 25

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1. PROJECT BACKGROUND AND GOAL

1.1 PURPOSE

The purpose of this project is to appoint a panel of external legal service providers to render legal services to the Gauteng Provincial Government (GPG) Department and entities for a period of 36 (thirty-six) months.

1.2 Background

The Gauteng Provincial Government (hereinafter “GPG”) seeks to appoint a panel of external legal service providers to render legal services to the GPG for a period of 36 (thirty-six) months. The GPG institutions are from time to time required to utilize legal advice or service on complex legal matters and the province has thus decided to establish a panel of external legal service providers to efficiently meet that need. The basic procurement principle governing the selection and appointment of a service provider from the panel is to allocate work to the appointed panel of legal service providers using the quotation process that is issued to all the panel members. This will ensure that selection and appointment of legal service providers meets the requirement of fairness and equity that is provided for in Section 217 of the Constitution of the Republic of South Africa 1996, Section 38 of the Public Finance Management Act 1 of 1999 (hereinafter “PFMA”) and related regulatory provisions. The procurement system (Request for Quotation) in line with the specific departmental SCM goals will further allow that each legal service provider that is listed on the panel is given a fair opportunity to render legal services as and when required.

1.3 Goal of the Project

The established panel of external legal service providers will bridge the resource gap within GPG institutions whilst improving efficiency and access to technical skills that are currently not readily available within GPG institutions.

2. CUSTOMER AND STAKEHOLDERS

2.1 Customer

Gauteng Provincial Treasury – GPT

2.2 Stakeholders

The Gauteng Provincial Treasury is responsible for providing services to all GPG departments and/or entities which are listed below:

- 2.2.1 Office of the Premier
- 2.2.2 Gauteng Department of Education

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- 2.2.3 Gauteng Department of Health
- 2.2.4 Gauteng Department of Roads and Transport
- 2.2.5 Gauteng Department of Infrastructure Development
- 2.2.6 Gauteng Department of Human Settlements
- 2.2.7 Gauteng Department of Social Development
- 2.2.8 Gauteng Department of Sport, Arts, Culture and Recreation
- 2.2.9 Gauteng Department of Agriculture and Rural Development
- 2.2.10 Gauteng Department of Community Safety
- 2.2.11 Gauteng Department of e-Government
- 2.2.12 Gauteng Department of Co-operative Governance and Traditional Affairs
- 2.2.13 Gauteng Department of Economic Development

2.3 Entities

- 2.3.1 Dinokeng Projects
- 2.3.2 Cradle of Humankind World Heritage Site
- 2.3.3 Gauteng Infrastructure Financing Agency
- 2.3.4 Gauteng Liquor Board
- 2.3.5 Gauteng Gambling Board Agency
- 2.3.6 Gauteng Enterprise Propeller
- 2.3.7 Gauteng Partnership Fund
- 2.3.8 Gauteng Growth Development Agency
- 2.3.9 Gauteng Tourism Authority

3. REGULATORY FRAMEWORK

Service providers must have a clear understanding of the Public Service regulatory framework as amended, which includes, but is not limited to, the following:

- 3.1** Alternative Dispute Resolution mechanisms;
- 3.2** Appropriation Act 13 of 2014;
- 3.3** Bank's Act, 1990 (Act No. 94 of 1990) as amended;
- 3.4** Best practices and case law binding the state;

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- 3.5** Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 3.6** Civil Proceeding Evidence Act, 1965 (Act No. 25 of 1965) as amended;
- 3.7** Companies Act, 2008 (Act No 71 of 2008);
- 3.8** Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 30 of 1993);
- 3.9** Competition Act, 1998 (Act No 89 of 1998);
- 3.10** Constitution of the Republic of South Africa, 1996;
- 3.11** Consumer Protection Act, 2008 (Act No 68 of 2008)
- 3.12** Criminal Procedure Act, 1977 (Act No 51 of 1977);
- 3.13** Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- 3.14** Employment of Educators Act 76 of 1998 (as it applies to Gauteng Department Education);
- 3.15** Institution of Legal proceedings against certain organs of state Act 40 of 2002;
- 3.16** Intergovernmental Relations Framework Act 13 of 2005;
- 3.17** Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963)
- 3.18** Labour Relations Act, 1995 (Act No. 66 of 1995);
- 3.19** Legal Practice Act, 2014 (Act No. 20 of 2014)
- 3.20** Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- 3.21** National Payment System Act, 1998 (Act No. 78 of 1998);
- 3.22** Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- 3.23** Patents Amendment Act, 2005 (Act No. 20 of 2005);
- 3.24** Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000)
- 3.25** Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- 3.26** Public Administration Management Act, 2014 (Act No 11 of 2014);
- 3.27** Public Procurement Bill;
- 3.28** Public Service Amendment Act, 2007 (Act No, 30 of 2007);
- 3.29** Public Finance Management Act, 1999 (Act No. 1 of 1999);
- 3.30** Public Service Regulations issued in terms of the Public Service Act
- 3.31** Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- 3.32** Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 3.33** Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 3.34** Protected Disclosures Amendment Act, 2017 (Act No. 5 of 2017);
- 3.35** Regulations issued in terms of the B-BBEEA;

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3.36 Regulations issued in terms of the MFMA;

3.37 Regulations issued in terms of the PPPFA;

3.38 Rules of Superior Court Rules of Civil Procedure;

3.39 Skills Development Act, 1998 (Act No 97 of 1998);

3.40 South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

3.41 State Attorney Amendment Act, 2014 (Act No. 13 of 2014)

3.42 State Liability Amendment Act, 2011 (Act No of 14 of 2011);

3.43 Treasury Regulations issued in terms of the PFMA and MFMA;

3.44 National Health Act, 2003 (Act No. 61 of 2003) as amended and its applicable regulations;

3.45 Disaster Management Amendment Act, 2015 (Act No 16 of 2015) and its regulations

3.46 National Environmental Management Act, 1998 (Act No 107 of 1998) and its regulations

3.47 National energy regulator of South Africa Act, 2004 (Act No. 40 of 2004) and its regulations;

NOTE: Should there be any updated version of any stated regulation or standard in this document; the updated version shall be applicable in practice until further notice.

4. SCOPE OF WORK

The assignment will be captured in an engagement letter to a service provider. The appointed service provider must be able to commence work as specified in the engagement letter with GPG institutions. Generally, timeframes cannot be pre-determined; therefore, the duration of any given assignment will depend on the operational urgency of the GPG institution's needs as well as the nature and scope of the work to be done. The appointed service providers in the panel will be expected to deliver the required services within the timeframes as specified in the engagement letter. Failing to comply with this requirement, the suspensive condition indicated in the Terms of Reference shall apply and the GPG reserves the right to follow due administrative process of dealing with poor contract performance for such a service provider. The legal service providers are required to use legal experts that are sufficiently skilled in handling specific legal matters and preferably experienced in dealing with the public sector. The successful bidders will be required to provide expert ad-hoc legal services, legal opinion, assist with the drafting, reviewing and handling any related or incidental legal matters, litigation and advisory services, representation of the Gauteng Provincial Government (GPG) Institutions and Stakeholders in the court, alternative dispute resolution forms and/or any other legal matters.

The scope of work may include amongst other areas of specialization as indicated on these terms of reference or may include any other area of specialization as per the requirement of the end-user.

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Bidders should NOTE that the list attached for AREAS OF SPECIALIZATION is not limited, however is used for the purposes of guidance.

4.1 AREA OF SPECIALIZATION

- Below are the types of legal services that may be required by the GPG institutions from time to time which do not constitute an exhaustive list:

TABLE 1:

Area of Specialization	Scope of Work	Required skills
1. Constitutional, International & Public Administrative Law	Provide legal advice, litigation support, interpretation of statutes and general legal support services to assist, as may be required from time to time, including the drafting, review and/or editing of legislation, policy, administrative and international law matters. Ensure technical quality, adherence to best practice and consistency and compliance with the constitution, Acts of Parliament, and the public sector regulatory framework.	Experience in providing legal opinions and/or advice in constitutional, administrative, and international law matters. Minimum 3 years' experience in drafting, vetting, interpretation, and compliance with international, administrative, and constitutional law.
2. Labour Law, Occupational Health and Safety (OHS)	Provide legal advice on labour, employment benefits and OHS. Assist with/handling disciplinary hearings, arbitrations and other labour dispute resolutions, alternative dispute resolutions channels and litigations from any other relevant court.	Minimum 3 years' experience in labour law litigation, OHS and public administration. Understanding of the regulatory framework governing public service employment. Understanding of labour law and employment law jurisprudence for purposes of providing legal opinions. Knowledge of bargaining council and any dispute resolution forum.

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Area of Specialization	Scope of Work	Required skills
3.Public Sector Governance	Provide legal advice on public sector institutional governance matters. Provide advice on regulatory compliance and policy compliance and any other relevant regulatory framework in connection thereto. Drafting and vetting of policies, procedures, governance documents and legislative prescripts. Conduct investigation of corporate governance and public finance regulatory compliance.	Minimum 3 years' experience in handling governance, constitutional and compliance matters within government. Understanding of regulatory and corporate governance framework governing public and trading entities.
4.Public Sector Regulatory Compliance	Provide legal advice, litigations support and/or assist in departments or entities in relation to their compliance with the applicable public sector regulatory and policy framework, including amongst others, POPIA, PAIA, PAJA, PFMA and the Constitution.	Minimum 3 years' experience in public sector regulatory compliance.
5.Civil Litigation	Provide advice and litigation support and/or representation on legal applications or actions brought against the departments and/or entities. Advice and provide legal support on case analysis and management, state liability compliance and litigation brought against certain organs of state. Advice on applicable Superior Courts Rules, case law and regulatory prescripts.	Minimum 3 years' experience in civil litigation and alternative dispute resolution mechanisms.
6.Transportation Law	Provide legal advice, litigations support and assist with the drafting, review and/or editing of legislation on transportation law and handle motor vehicle litigation and matters related to roads and transport claims against government	Minimum 3 years' experience in and understanding of transportation law.
7. Procurement Law	Provide legal advice on procurement laws including: PFMA, SCM Treasury Regulations and	Minimum 3 years' experience in public procurement laws and

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Area of Specialization	Scope of Work	Required skills
	related Provincial Frameworks, Public Procurement Bill, B-BBEE, PPPFA, PAIA, Economic Growth, Industrial Development and Local Production and Content" requirements - Provide legal support in the drafting, review and/or editing of applicable legal document and related public sector legal instruments. advice on procurement processes and investigations, PAIA requests and any other litigious claims or applications brought by or against the department and/or entities. Assist where necessary with public procurement processes.	processes, commercial law and law of contract.
8. Corporate and Commercial Law	Provide advice and legal support on commercial transaction and project structuring, contract conclusion, contract and project management. Advice and provide legal support on compliance with the prescripts of the PFMA, MFMA, Appropriation Act etc. Provide legal opinions, litigations and assist with the drafting, review and/or editing of legislation of a corporate law nature. Provide advice on tax matters. Drafting, review and advice on commercial agreements. Advice on legal matters arising from asset, risk, forensic and debt management.	Minimum 3 years' experience in working with transactions of corporate law nature. Excellent research and drafting skills for the purposes of preparing legal opinions of corporate law nature, banking law and tax law. Experience in providing advice and delivering on time in terms of outputs.
9. Property Law	Provide legal advice and legal support on property and construction laws, conveyancing, and notarial registration.	Minimum 3 years' experience in property law, construction, conveyancing, and notarial practice matters.
10. International Trade Law	Provide legal opinions, litigations and assist with the drafting, review and/or editing international trade and investments matters	Minimum 3 years' experience and understanding of

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Area of Specialization	Scope of Work	Required skills
	and related legal documents.	international trade matters.
11. Competition Law	Provide legal advice and support on competition law matters and provide the necessary legal assistance related to the review and/or drafting of any legal documents or submissions related thereto.	Minimum 3 years' experience in competition law.
12. Information Communication Technology (ICT) Law and	Provide legal opinions, litigations, advice and assist with the drafting, review and/or editing of legislation on information technology law regarding the integration of systems, software, website development etc.	Minimum 3 years' experience in IT law and communication.
13. Environmental Law; and Energy Law	Provide advice, legal opinions, litigations and assist with the drafting, review and/or editing of legislation and ensuring compliance with environmental law and agricultural matters to protect and preserve the environment. Assist government with legal frameworks in the development, implementation, and commercialization of renewable sources of energy.	Minimum 3 years' experience in environmental law. Minimum 3 years' experience in developing frameworks on renewable energy independent power producer procurement programme.
14. Medical Law	Provide legal advice and support on medical law matters, including malpractice litigation claims and delictual claims. Conduct forensic investigation and provide litigation support on medical malpractice cases reported to the Department.	Minimum 3 years' experience in matters of medical negligence or malpractice.
15. Municipal Laws	Assist with the legal interpretation, advise and opinions on the application of municipal laws including the MFMA and its regulations, Municipal By-Law, manuals, guidelines, circulars, instruction and practice notes.	Minimum 3 years' experience in and understanding of municipal laws.

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Area of Specialization	Scope of Work	Required skills
16. Human Settlement Laws and related legislation	Assist government with representation on legal matters, litigation and providing legal advice including the drafting, review and/or editing of legislation on human settlement related matters.	3 years' experience in housing legislation, different housing programmes and other frameworks relating to housing matters.
17. Legislative Drafting	Assist with the drafting, review and/or editing of legislation, amendments to legislation, legal notices, circulars and policies. Advise on the legality and constitutionality of proposed legislation, policies and other legal instruments and undertake socio-economic impact assessments.	3 years' experience in legislative drafting and knowledge of legislative prescripts and the approval process for legislation.
18. Intellectual Property Law	Provide legal opinions, litigations, advice and assist with the drafting, review and/or editing of legislation and advice on intellectual property matters.	Minimum 3 years' experience in intellectual property matters.
19. Forensic Law	Provide legal advice and opinions on matters related to forensics and investigations, implementation of forensic outcomes and recommendations which may include the provision of accurate, timely, and thorough information to all levels of decision makers in Forensic science as a multidisciplinary area of gathering evidence to be used to advance any legal matter.	Minimum 3 years' experience in forensic and investigation matters.
20. Liquor law	Provide legal advice and opinions on liquor laws, licensing and assist in litigation matters	Minimum 3 years' experience in liquor law.
21. Civil and Criminal law	Provide legal opinions, advise and legal support on civil and criminal law matters, and assist in litigation and court proceedings. Provide legal opinions and advice on arrests, detentions cases, forensic, audit and SIU investigation outcomes and/or recommendations	Minimum 3 years' experience in civil and criminal law litigation and experience in forensic, audit and SIU investigations

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Area of Specialization	Scope of Work	Required skills
22. Gambling law	Provide legal opinions and advise on gambling law, licensing and provide legal support on gambling related legal matters	Minimum 3 years' experience in gambling law.
23. Consumer protection law	Provide legal opinions and advise on consumer protection, litigation matters, court proceedings. Shield buyers from unfair or harmful business practice in line with the consumer protection act 68 of 2008 and its applicable regulations. Provide the necessary legal assistance related to the review and/or drafting of any legal documents or submissions related thereto.	Minimum 3 years' experience in consumer protection law
24. Small Enterprise and Economic Development Laws	Provide legal opinions and advise on consumer protection, litigation matters and court proceedings in line with National Small Business Act, 1996 (Act No 102 of 1996) as amended, Co-operative Act 2013, (Act No 6 of 2013) as amended and their applicable regulations. Provide the necessary legal assistance related to the review and/or drafting of any legal documents or submissions related thereto.	Minimum 3 years' experience
25. Tourism law	Provide legal opinions and advise on tourism law, litigation matters and court proceedings in line with Tourism Act, 2014 (Act No. 3 of 2014) and its applicable regulations. Provide the necessary legal assistance related to the review and/or drafting of any legal documents or submissions related thereto.	Minimum 3 years' experience in tourism law

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5. DURATION

- a) The panel of external legal service providers will be appointed for a period of 36 (thirty-six) months from the date of commencement.
- b) This period shall commence from the date a contract is approved for an award to the successful service providers.

6. COUNTRY OF ORIGIN

- a) All services shall be rendered by South African law firms or unincorporated legal practices, registered with the Legal Practice Council or Companies and Intellectual Property Commission (CIPC), whichever is applicable.

7. GENERAL CONDITIONS

7.1 RFP PACK

- a) General conditions of this bid are stipulated in the various documents which make up the RFP pack (refer to annexure A of the RFP pack).
- b) Bidders must submit their proposals on the prescribed documents and include the following:
 - I. Name of bidder.
 - II. Clearly mark the title: **"APPOINTMENT OF A PANEL OF EXTERNAL LEGAL SERVICE PROVIDERS TO THE GAUTENG PROVINCIAL GOVERNMENT FOR A PERIOD OF 36 MONTHS"**.
- c) A duly signed covering letter providing full contact details and confirming that the bidder is willing and able to render the services as specified in this Terms of Reference documents and accepts the rules applicable to the bid and the bid evaluation criteria as specified in this Terms of Reference document.
- d) Service comprehension, demonstrating the bidder's understanding of the GPG's service requirements as specified in this Terms of Reference document as well as any proposals for enhancement of these service requirements.
- e) The curriculum vitae of each resource that is proposed by the service provider to form part of the team that will render services to the GPG in terms of this bid, clearly demonstrating:
 - I. Capacity requirements that are suitable for this assignment.
 - II. Company track record.
 - III. Qualifications, skills and experience.

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7.2 SPECIAL CONDITIONS OF CONTRACT UNDER RFP DOCUMENT

- a) The bidder confirms that he/she has read, understood, and accepts the special conditions of contract, which are attached as per Annexure B on section one (1) of the tender document.
- b) Work will be assigned by the GPG institutions to the members of the panel through a procurement system (Request for Quotation) in line with the departmental specific goals as indicated in the SCM POLICIES.
- c) The procurement system (Request for Quotation) in line with the specific departmental specific goals will however be aligned and subjected to specific goals as enshrined in the buying institution SCM policies based on the nature, complexity, extent, and duration of each legal matter. This requires the alignment of specific needs of the GPG institutions to the skills, competencies, availability, and general capacity of a legal service provider.
- d) The panel will be reviewed and updated periodically as and when GPG deems fit to allow additional capacity and additional areas of specialization.
- e) Price and Preference points evaluation will be used during the request for quotation process where the price and specific goals would be required. The panel rule will use quotation process from all the successful panel members which will then be evaluated on both price and preference points as per the regulation 4 of PPR 2022 will be used in line with their departmental SCM policies of procuring entity.
- f) Costs incurred by the bidder pertaining to the preparation of this bid will not be reimbursed.

7.3 GPT ELECTRONIC INVOICE SUBMISSION AND TRACKING

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

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8 SUSPENSIVE CONDITION (REFER TO ANNEXURE C)

- a) Due to operational requirements, the GPG institutions frequently requires external legal services on an urgent basis. Once a service provider has confirmed his or her ability to render the required legal service by the required timeframe in terms of date and time,
- b) The letter of instruction from the GPG institutions to the service provider shall be subject to the suspensive condition indicating that, if the required legal service has not been rendered to the GPG institution in accordance to the agreed timeframes and scope such as the agreed date and time, not as a result of delays or omissions by the GPG institution, the appointment shall automatically expire and the GPG institution shall not be liable for any payment to the service provider pertaining to that appointment.
- c) Where the time frame for beginning and completion of legal services required by GPG institution as the letter of instruction differ, such time frame differences and the acceptable time frames must be negotiated and agreed upon prior to the commencement of the required legal services (extended or shortened timeframes affect the cost of rendering legal services)
- d) *An undertaking or declaration must be submitted as part of the mandatory documents to ensure compliance with the suspensive condition.*
- e) *Double dipping or Duplication of same functions by different legal practitioners within the same law firm is not allowed and as such GPG reserves the right not negotiate and not to compensate for duplicated functions.*

9 INTEGRITY AND PROFESSIONAL STANDARD

- a) The GPT expects the utmost integrity from each legal service provider appointed on the panel and that each service provider must maintain the highest professional standard when rendering services to the GPG.
- b) The GPT will conclude an agreement with each service provider that is appointed to the panel of external legal service providers. In terms of this agreement, the service provider will be held accountable for agreed deliverables, professional conduct, and integrity.

10 DISBURSEMENTS

- a) The GPG will only pay for ancillary and miscellaneous expenses incurred by a service provider if the GPG has given prior written consent to the service provider to incur such expenses.

11 RELATIONSHIP MANAGEMENT

- a) The service provider will liaise primarily with the Head of Legal Services of the GPG institutions in the execution of an instruction for the rendering of legal services.

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- b) The Head: Legal Services of the GPG institutions will engage regularly with the service provider to ensure efficient execution of the instruction and may require meeting with the service provider according to a pre-agreed meeting schedule or as and when reasonably requested by either party.
- c) The service provider must regularly report progress to the Head: Legal Services of such GPG institution.
- d) Any replacement of a professional staff member within the firm must meet the same requirements as specified in the TOR.

12 PRICING STRUCTURE

- a) Pricing Proposals must be aligned to the most recent Department of Public Service and Administration (DPSA) guide on "Hourly Fee Rates for Consultants", which clearly sets out the breakdown of cost for providing the services as per the applicable levels. Should there be an amended guide, such an amended guide will replace the current rates.
- b) The GPG reserves the right to negotiate other ancillary or **miscellaneous expenses with the appointed legal service providers. The negotiation process will be conducted in line with the institutional SCM policies.**
- c) Fees for services rendered will be payable in the South African rand on completion of the legal matter or milestone payments may be considered in accordance with the deliverables for complex matters as would have been agreed to at the time of the purchase order. After successful completion of the legal matter, the legal service provider must submit the verdict for the processing of the payment.
- d) Fees will be limited to the most recent DPSA published Hourly Fee Rates for Consultants that are published annually or at the rate per hour as agreed between the GPG and the legal service provider as per the confirmation letter of engagement from the GPG institution to the service provider that serves as an appointment to render a specific service.
- e) Bidders that are registered for VAT must clearly specify fees that are VAT inclusive for the purposes of purchase order and payments. The fees must indicate a rate per hour in line with the DPSA rate for consultants per resource and level, but this will only happen during the procurement stage.
- f) The determination of the consultancy rates option is based on Short Term which is within 60 consulting days and Long Term which is more than 60 consulting days. The job requirement is based on the job evaluation of the determined level of work.

13 RULES OF ALLOCATING WORK TO THE LEGAL PANELLISTS

- a) Allocation of work to the panel will be done using the RFQ procurement system that is fair and equitable.

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- b) The GPG Departments and Entities will use quotation process to allocate work to the panel members in accordance with the Departmental Specific Goals and any other transformative Departmental objectives.
- c) Confirmation of the required skill set and resource availability to deliver in accordance with the scope of work as per Departmental requirement.
- d) Confirmation of the desired timeframes to complete the allocated work.
- e) Once the selection and appointment of suppliers is concluded, a legal panel will be established, and the bidders will be utilized on a basis of as and when required since all appointed service providers into the panel would have qualified in the functionality evaluation.
- f) (Request for Quotation) in line with the specific goals as per their departmental SCM policies as per the regulation 4 of PPR 2022) within the GPG departments.
- g) Gauteng Government is committed to promoting transformation within the legal services sector and as such, bidders are encouraged to carefully structure their project teams to respond to the equity targets in their company structure.

14 GAUTENG PROVINCIAL GOVERNMENT AND ENTITIES RESERVE THE RIGHT TO

- a) Amend any bid conditions, bid validity period, Scope of Work/TOR or extend the bid closing date before the bid closing date. Such amendments will be posted on the e-Tender publication Portal website under the relevant tender information. All prospective bidders should therefore ensure that they visit the website regularly before they submit their bid response to ensure that they are kept updated on any amendments in this regard.
- b) Establish the panel of legal service providers for the full Scope of Work or in part of the bid Scope of Work or not make an award at all.
- c) GPG reserves the right to increase capacity on a periodic basis wherein the tender may be advertised and awarded to address issues relating to capacity.

15 AUTOMATIC DISQUALIFICATION OF THE BIDDERS

GPG reserves the right to disqualify any bidder that has done any one or more of the following and such disqualification may take place without prior notice to the offending bidder if a bidder has:

- a) Submitted information that is fraudulent, factually untrue, or inaccurate.
- b) Received information not available to other potential bidders through fraudulent means.
- c) Misrepresented or altered material information in whatever way or manner.
- d) Promised, offered, or made gifts, benefits to any GPG Bid committee members.
- e) Canvassed, lobbied to gain unfair advantage.
- f) Committed fraudulent acts; and

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STAGE 1B: DESKTOP / FUNCTIONALITY EVALUATION CRITERIA

- a) A total of **100 points** is allocated for stage **1B**.
- b) Only bidders achieving a minimum threshold of **60 points** will be accepted to the panel for rendering legal services to GPG Departments.
- c) Bidder's must submit their proposal in respect of **FUNCTIONALITY EVALUATION CRITERIA ATTACH SUPPORTING DOCUMENTATION** (eg. qualification, certificates, and registration documents as a legal Practitioner/director/partner/shareholder)
- d) All Proposed Team of Professionals Legal Practitioners employed in their respective firm.
- e) All foreign qualifications must be accompanied with the SAQA validation report.
- f) The department reserves the right to verify all the information including the documentation provided by the Bidder/s

TABLE 3: FUNCTIONALITY EVALUATION CRITERIA:

AREA	REQUIREMENTS / CRITERIA	POINTS
1. QUALIFICATION OF THE PROFESSIONAL LEGAL PRACTITIONER The bidder must provide an organogram of key personnel Partners or directors of the law firm, Advocates, Attorneys qualification.	<u>SENIOR ATTORNEY / ADVOCATE</u>: Bidders must provide/attach proof of PROFESSIONAL LEGAL QUALIFICATION IN TERMS OF SECTION 26 OF LPA (LLB, LLM or equivalent law degree)	20
	a) Bidders that did not provide/attach proof of professional legal qualifications and bidders that submitted qualifications that are below the minimum NQF level 8: (0 points)	
	b) NQF Level 8, Bachelor of Laws (LLB) / BProc Qualification or equivalent law degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA AND AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA (15 points)	

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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	c) NQF Level 9, Master of Laws (LLM) Qualification and above or equivalent master's degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA AND AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA: (20 points)	
1.1 EXPERIENCE OF THE SENIOR ATTORNEY / ADVOCATE ON HANDLING LITIGATION MATTERS Bidders must attach Curriculum Vitae or Resume listing the experience from current and /or past employers with contactable references.	<u>Indicate experience in representing public sector in the high court on litigation matters</u> a) Less than 3 years of experience in practice: (0 points) b) Equal or more than 3 years but less than 5 years of experience in practice: (3 points) c) Equal or more than 5 years but less than 7 years of experience in practice: (5 points) d) Equal or more than 7 years but less than 9 years' experience in practice: (10 points) e) Equal or more than 9 years of experience of practise and above: (15 points)	15
2. QUALIFICATION OF PROPOSED PROJECT LEGAL PROFESSIONAL TEAM MEMBERS (RESOURCE 1) PROJECT TEAM: Attach Curriculum vitae of proposed project team members (at least 2 project team members).	ATTORNEY / ADVOCATE: Bidders must provide / attach proof of PROFESSIONAL LEGAL QUALIFICATION IN TERMS OF SECTION 26 OF LPA (LLB, LLM or equivalent law degree) a) Bidders that did not provide/attach proof of professional legal qualifications and bidders that submitted qualifications that are below the minimum NQF level 7: (0 points) b) NQF Level 7, Bachelor of Commerce in Law (BCom Law) or Bachelor of Arts in Law (BA Law) Qualification or equivalent law degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF	10

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	SECTION 24 OF LPA AND c) AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA: (5 points) d) NQF Level 8, Bachelor of Laws (LLB) / BProc Qualification and above or equivalent law degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA AND AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA: (10 points)	
2.1 EXPERIENCE OF THE JUNIOR ATTORNEY / ADVOCATE ON HANDLING LITIGATION MATTERS Bidders must attach Curriculum Vitae or Resume listing the experience from current and /or past employers with contactable references.	<u>Indicate experience in representing public sector in the high court on litigation matters</u> a) Less than 3 years of experience in practice: (0 points) b) Equal or more than 3 years but less than 5 years of experience in practice: (5 points) c) Equal or more than 5 years and above years of experience in practice: (10 points)	10
2.2 QUALIFICATION OF PROPOSED PROJECT LEGAL PROFESSIONAL TEAM MEMBERS (RESOURCE 2)	<u>ATTORNEY / ADVOCATE:</u> Bidders must provide / attach proof of PROFESSIONAL LEGAL QUALIFICATION IN TERMS OF SECTION 26 OF LPA (LLB, LLM or equivalent law degree) a) Bidders that did not provide/attach proof of professional legal qualifications and bidders that submitted qualifications that are below the minimum NQF level 7: (0 points) b) NQF Level 7, Bachelor of Commerce in Law (BCom Law) or Bachelor of Arts in Law (BA Law) Qualification or equivalent law degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA	10

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	AND AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA: (5 points) c) NQF Level 8, Bachelor of Laws (LLB) / BProc Qualification and above or equivalent law degree WITH ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA AND AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA: (10 points)	
2.3 EXPERIENCE OF THE JUNIOR ATTORNEY / ADVOCATE ON HANDLING LITIGATION MATTERS Bidders must attach Curriculum Vitae or Resume listing the experience from current and /or past employers with contactable references.	<u>Indicate experience in representing public sector in the high court on litigation matters</u> a) Less than 3 years of experience in practice: (0 points) b) More than 3 years but less than 5 years of experience in practice: (5 points) c) More than 5 years and above years of experience in practice: (10 points)	10
3. REFERENCES Service Contract or Award Letter within the last 5 years AND Reference letters must be on the client's letter head that is signed by the client including the client's contact details a contactable telephone number or email address Service contracts/ Award letters must match or correlate to the reference letter attached	<u>Bidders/partners/directors/practitioner/s to provide copy of signed service contracts or award letter as contractual proof of experience in rendering legal services.</u> AND <u>contactable reference/s letter/s confirming that the bidder/partners/directors/practitioner/s has successfully rendered the required legal service/s to the client.</u> a) No signed service contracts or award letter including reference letter in rendering legal service attached: (0 points) b) 1 signed service contracts or award letter including reference letter in rendering legal service attached: (5 points)	25

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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	c) 2 signed service contracts or award letter including reference letter in rendering legal service attached: (10 points) d) 3 signed service contracts or award letter including reference letter in rendering legal service attached: (15 points) e) 4 signed service contracts or award letter including reference letter in rendering legal service attached: (20 points) f) 5 and more signed service contracts or award letter including reference letter in rendering legal service attached: (25 points)	
TOTAL POINTS		100
MINIMUM THRESHOLD		60

A bidder that fails to meet the **MINIMUM TRESHOLD** stipulated under functionality evaluation criteria shall not be considered for further evaluation.

CHECKLIST FOR MANDATORY RETURNABLE DOCUMENTS BY THE BIDDER

DOCUMENT NAME	TICK	
	YES	NO
1. COMPLETED AND SIGNED SBD 1 AND 4		
2. IN AN EVENT WHERE A BIDDER IS A JOINT VENTURE/CONSORTIUM /PARTNERSHIP MUST SUBMIT A: JOINT VENTURE/CONSORTIUM /PARTNERSHIP AGREEMENT, DULY SIGNED BY ALL PARTIES THERETO, DETAILING THE PERCENTAGE (%) SPLIT BETWEEN THE PARTIES AND PORTION/S OF WORK TO BE SHARED		
3. COPIES OF ACADEMIC AND PROFESSIONAL QUALIFICATIONS OF ALL LEGAL PRACTITIONERS AND CV's		
4. ADMISSION CERTIFICATES BY HIGH COURT OF SOUTH AFRICA IN TERMS OF SECTION 24 OF LPA		

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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5. AUTHORIZATION TO BE ENROLLED BY THE LPC IN TERMS OF SECTIONS 30 OF LPA		
6. A FIDELITY FUND CERTIFICATE IN TERMS OF SECTION 84 OF LEGAL PRACTICE ACT, 2014 (Act No. 28 of 2014) AS AMENDED		
7. VALID CERTIFICATE OF GOOD STANDING ISSUED BY THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL		
8. COMPLETE AND SIGN PERSONAL INFORMATION PROCESSING FORM (POPI) AS PER PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013) (THE POPI CONSENT FORM)		
9. UNDERTAKING/DECLARATION FROM THE BIDDERS CONFIRMING COMPLIANCE TO THE SUSPENSIVE CONDITION. (REFER TO ANNEXURE C)		

NB: SHOULD THE BIDDER NOT ATTACH THE ABOVE MANDATORY DOCUMENTS, OR SHOULD THE BIDDER TICK YES AND NOT SUBMIT THE REQUIRED EVIDENCE DOCUMENT, THE BIDDER WILL BE DEEMED NON-RESPONSIVE

CHECKLIST FOR OTHER RETURNABLE DOCUMENTS BY THE BIDDER	YES	NO
1. LEGAL MANAGEMENT COURSE: PROOF OF COMPLETION OF THE LEGAL PRACTICE MANAGEMENT COURSE AS PROVIDED FOR IN SECTION 85 OF THE LEGAL PRACTICE ACT OR PROOF OF FULL EXEMPTION FROM THE RELEVANT LAW SOCIETY		
2. A TAX COMPLIANCE STATUS PIN MUST BE CLEARLY INDICATED IN THE SBD 1 FORM AS THAT WILL GRANT THIRD-PARTY ACCESS TO THE BIDDER'S TAX COMPLIANCE STATUS.		
3. B-BBEE AFFIDAVIT OR B-BBEE CERTIFICATE CONFIRMING THE SERVICE PROVIDER'S B-BBEE STATUS.		
4. A CENTRAL SUPPLIER DATABASE (CSD) REGISTRATION INDICATING THE CSD MAAA NUMBER (IF SO REGISTERED) FOR VERIFICATION BY GPT		
5. REGISTRATION DOCUMENTS OF THE PRIMARY/MAIN BIDDER'S BUSINESS WITH THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC) OR MASTER OF THE HIGH COURT IN SOUTH AFRICA, WHICHEVER IS APPLICABLE		

NB: SHOULD THE BIDDER TICK YES AND NOT SUBMIT THE REQUIRED EVIDENCE DOCUMENT ON OTHER RETURNABLE DOCUMENTS. THE BIDDER WILL BE CONTACTED TO SUBMIT SUCH DOCUMENTS WITHIN SEVEN DAYS AFTER THE COMPLETION OF THE EVALUATION BUT THE BIDDER WILL NOT BE ELIMINATED UNLESS THE SEVEN DAYS LAPSES AND THE BIDDER WILL BE REGARDED AS NON-RESPONSIVE.

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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ANNEXURE C: DECLARATION

Undertaking /Declaration and Confirmation by a bidder to comply with Suspensive Terms and Conditions

Due to operational requirements, the GPG institutions frequently requires external legal services on an urgent basis. Once a service provider has confirmed his or her ability to render the required legal service by the required timeframe in terms of date and time,

- The letter of instruction from the GPG institutions to the service provider shall be subject to the suspensive condition indicating that, if the required legal service has not been rendered to the GPG institution in accordance to the agreed timeframes and scope such as the agreed date and time, not as a result of delays or omissions by the GPG institution, the appointment shall automatically expire and the GPG institution shall not be liable for any payment to the service provider pertaining to that appointment.
- Where the time frame for beginning and completion of legal services required by GPG institution as the letter of instruction differ, such time frame differences and the acceptable time frames must be negotiated and agreed upon prior to the commencement of the required legal services (extended or shortened timeframes affect the cost of rendering legal services)
- An undertaking or declaration must be submitted as part of the mandatory documents to ensure compliance with the suspensive condition.*
- Double dipping or Duplication of same functions by different legal practitioners within the same law firm is not allowed and as such GPG reserves the right not negotiate and not to compensate for duplicated functions.*

Bidder Name:	
Bidder Practice number:	
Name of bidders' representative:	
Confirmation to use the DPSA hourly rates for consultants: YES/ NO	
Confirm compliance with suspensive conditions: YES/ NO	

	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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ANNEXURE D: FIELD OF LAW CATEGORIES

1. BIDDERS ARE REQUESTED TO **MARK WITH AN "X" THEIR AREA/S OF SPECIALIZATION/S.**
2. *BIDDERS TO NOTE THAT THE AREA OF SPECIALIZATION BELOW ARE AMONGST OTHER LEGAL SERVICES/AREAS THAT **MAY** BE REQUIRED BY THE GPG DEPARTMENTS INSTITUTIONS AND STAKEHOLDERS AND THAT THE LIST IS NOT EXHAUSTIVE.*

AREA OF SPECIALIZATION	MARK WITH AN "X"	AREA OF SPECIALIZATION	MARK WITH AN "X"
1. Constitutional, International & Public Administrative Law		14. Information Communication Technology (ICT) Law and	
2. Labour Law, Occupational Health and Safety (OHS)		15. Environmental Law; and Energy Law	
3. Public Sector Governance		16. Medical Law	
4. Public Sector Regulatory Compliance		17. Municipal Laws	
5. Civil Litigation		18. Human Settlement Laws and related legislation	
6. Transportation Law		19. Legislative Drafting	
7. Procurement Law		20. Intellectual Property Law	
8. Corporate and Commercial Law		21. Forensic Law	
9. Property Law		22. Liquor Law	
10. International Trade Law		23. Civil and Criminal law	
11. Competition Law		24. Gambling Law	
12. Consumer Protection		25. Tourism Law	

 GAUTENG PROVINCE PROVINCIAL TREASURY REPUBLIC OF SOUTH AFRICA	PROVINCIAL SUPPLY CHAIN MANAGEMENT	
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13. Small Enterprise and Economic Development Laws			
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OTHER: (PLEASE SPECIFY) _____

OTHER: (PLEASE SPECIFY) _____

OTHER: (PLEASE SPECIFY) _____



GAUTENG PROVINCE
PROVINCIAL TREASURY
REPUBLIC OF SOUTH AFRICA

PROVINCIAL SUPPLY CHAIN MANAGEMENT

NON-COMPULSORY BRIEFING SESSION DETAILS

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ANNEXURE E

NON-COMPULSORY BRIEFING SESSION	MICROSOFT TEAMS
RFP DESCRIPTION	A PANEL OF EXTERNAL LEGAL SERVICE PROVIDERS TO RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL GOVERNMENT DEPARTMENTS AND ENTITIES FOR A PERIOD OF 36 MONTHS
BID NUMBER	GT/GPT/055/2024
DATE	31 MAY 2024 FROM 10:00 AM TO 11H00AM
TIME	10:00 AM TO 11H00 AM
LINK	Microsoft Teams meeting Join on your computer, mobile app or room device - Join with a video conferencing device Click here to join the meeting Meeting ID: 342 784 026 155 Passcode: C2Qo7K Download Teams Join on the web Join with a video conferencing device.

BRIEFING SESSSION LINK-A PANEL OF EXTERNAL LEGAL SERVICE PROVIDERS TO RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL GOVERNMENT DEPARTMENTS AND ENTITIES FOR A PERIOD OF 36 MONTHS-16 MAY 2024



GAUTENG PROVINCE
PROVINCIAL TREASURY
REPUBLIC OF SOUTH AFRICA

Provincial Supply Chain Management

Registered Supplier Confirmation

Page 1 of 1

THIS FORM IS TO BE COMPLETED BY REGISTERED SUPPLIERS ONLY

PLEASE NOTE:

SUPPLIERS ARE REQUIRED TO PROVIDE THEIR REGISTERED CENTRAL SUPPLIER DATABASE (CSD) NUMBER _____

For confirmation of your supplier number and/or any assistance please call the GPT Call Centre on **0860 011 000**.

Registered Suppliers to ensure that all details completed below are CURRENT.

SUPPLIER DETAILS			
GPT Supplier number			
Company name (Legal & Trade as)			
Company registration No.			
Tax Number			
VAT number (If applicable)			
COIDA certificate No.			
UIF reference No.			
Street Address		Postal Address	
CONTACT DETAILS			
Contact Person		Telephone Number	
Fax Number		Cell Number	
e-mail address		Principal's Id number	
BANKING DETAILS (in the name of the Company)			
Bank Name		Branch Code	
Account Number		Type of Account	

I HEREBY CERTIFY THAT THIS INFORMATION IS CORRECT.

Name(s) & Signature(s) of Bidder(s)

DATE:



Provincial Supply Chain Management

Financial Statements

Page 1 of 1

Submission of Financial Statements

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

a) Financial statements must be signed by the auditor (in the case of companies) or the accounting officer (in the case of close corporations) the owner (in case of sole proprietors). Signatures must be on the accounting officer's / auditors report on the auditor's /accounting officer's letterhead.

b) Financial statements must be signed by the member/s (in the case of close corporations) or by the director/s (in the case of companies.)

c) In bids where consortia/joint ventures/sub-contractors and partnerships are involved, all bidders must submit their financial statements.

d) If it is a new or dormant entity an opening set of financial statements must be submitted with the tender document. A letter from the auditor (in the case of companies) or the accounting officer (in the case of close corporations) stating that the entity has not yet traded must be attached.

e) In cases where an entity has operated for a period less than a year the Management Accounts Report for the period in operation must be submitted signed accordingly as stated in paragraph (a) and (b) of this document.

f) In cases where the entity has operated for a period more than a year but less than two years, then the financial statement for the first year of operation signed accordingly as per paragraph (a) and (b) of this document must be submitted.

Annexure A

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT July 2010

NOTES

The purpose of this document is to:

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

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

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

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
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20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
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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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance**
- 7.1 Within thirty (30) days of receipt of the notification of contract award,

security

the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the

cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties,

- provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

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

15. Warranty

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

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

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

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser

may have against the supplier under the contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily

available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the

envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)

Annexure B



CONTRACT FOR SERVICES: (AS PER TERMS OF REFERENCE)

TENDER NUMBER: _____

BETWEEN

THE GAUTENG PROVINCIAL TREASURY

AND

REGISTRATION NUMBER: _____

WHEREBY IT IS AGREED AS FOLLOWS:

Initials: _____ Department _____ Service Provider _____

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1. DEFINITIONS

In this Agreement, unless the contrary is clearly indicated -

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

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 Department Service Provider

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

Initials:
 Department Service Provider

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

2. ABBREVIATIONS

GPG – Gauteng Provincial Government

GPT – Gauteng Provincial Treasury

Initials: _____ _____
 Department Service Provider

3. INTERPRETATION

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

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 Department Service Provider

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

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

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

4. PREAMBLE

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

5. APPOINTMENT AND ACCEPTANCE

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

6. COMMENCEMENT AND DURATION

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

7. THE SERVICE

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

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

Initials: _____ _____
 Department Service Provider

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

8. SERVICE PROVIDER UNDERTAKINGS AND WARRANTIES

The Service Provider undertakes and warrants that:

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

Initials: _____ _____
 Department Service Provider

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

9. GAUTENG TREASURY'S UNDERTAKINGS AND WARRANTIES

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

Initials: _____ _____
 Department Service Provider

10. CHARGES

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

11. INVOICE AND PAYMENT

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

Initials: _____ _____
 Department Service Provider

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

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

12. PROJECT TEAM

- 12.1 The Parties shall from Commencement Date form a project team, which will be responsible for the management of the Agreement so as to ensure the smooth and satisfactory delivery of the Services by the Service Provider to the GPT.
- 12.2 The Project team will be agreed to by Parties.
- 12.3 The functions of the project team shall be as follows:
- 12.3.1 to facilitate communication between the Parties;
 - 12.3.2 to review the progress on the implementation of the Agreement;
 - 12.3.3 to manage and resolve potential disputes;
 - 12.3.4 to monitor and maintain alignment with departmental policy and strategy;
 - 12.3.5 to achieve Agreement objectives within agreed scope, time, cost and quality;
 - 12.3.6 to provide advice and consent on scope Variation;
 - 12.3.7 to facilitate all necessary departmental approvals; and
 - 12.3.8 to provide feedback to relevant stakeholders.

13. PERFORMANCE MANAGEMENT

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

Initials: _____ _____
 Department Service Provider

14. DATA PROTECTION

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

14.2 The Service Provider hereby warrants:

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

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

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

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

14.3 The GPT may at any time:

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

Initials: _____ _____
 Department Service Provider

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

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

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

15. CONFIDENTIALITY

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

15.1 to treat as strictly confidential all Confidential Information;

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

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

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

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

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

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

Initials: _____ _____
 Department Service Provider

16. AUDIT RIGHTS

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

17. INTELLECTUAL PROPERTY

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

Initials: _____ _____
 Department Service Provider

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

18. GENERAL INDEMNITY

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

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

19. LIMITATION OF LIABILITY

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

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

Initials: _____ _____
 Department Service Provider

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

20. EVENTS OF DEFAULT

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

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

Initials: _____ Department _____ Service Provider

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

21. BREACH

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

22. PENALTY

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

23. DISPUTE RESOLUTION AND ARBITRATION

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

Initials: _____ _____
 Department Service Provider

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

24. NON-SOLICITATION

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

25. CESSION AND ASSIGNMENT

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

26. PUBLICITY

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

27. FORCE MAJEURE

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

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

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

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

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

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

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

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

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

Initials: _____ _____
 Department Service Provider

28. DOMICILIA CITANDI ET EXECUTANDI

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

28.1.1 Department:

Physical: Imbumba House
75 Fox Street
Johannesburg

Postal: Private Bag X12
Marshalltown
2107

For attention: The Head: Gauteng Provincial Treasury

28.1.2 Service Provider:

Physical:

Postal:

For attention:

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

29. NOTICE

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

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

Initials: _____ Department _____ Service Provider _____

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

30. GOVERNING LAW

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

31. RELATIONSHIP OF THE PARTIES

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

32. SEVERABILITY

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

33. ASSURANCE THAT THIS AGREEMENT IS BINDING

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

Initials: _____ _____
 Department Service Provider

34. GENERAL

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

Initials:

Department

Service Provider

SIGNED ON BEHALF OF EACH PARTY AS FOLLOWS:

SIGNED AT JOHANNESBURG, REPUBLIC OF SOUTH AFRICA ON

THIS _____ DAY OF _____ 2021

FOR AND BEHALF OF:

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

SIGNED AT JOHANNESBURG, REPUBLIC OF SOUTH AFRICA ON

THIS _____ DAY OF _____ 2021

FOR AND BEHALF OF:

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

Initials:

Department_____
Service Provider