



TERMS OF REFERENCE

FOR THE

**CONCEPTUAL DESIGN, LAYOUT AND PRINTING
OF THE UNIVERSAL SERVICE AND ACCESS
AGENCY OF SOUTH AFRICA (USAASA) AND
THE UNIVERSAL SERVICE AND ACCESS
FUNDS' (USAF) 2025/26 ANNUAL REPORTS**

RFQ NUMBER: USA/RFQ/CLP/02/2026/27

Closing date: 29 May 2026

1. INTRODUCTORY INFORMATION

- 1.1. The Universal Service and Access Agency of South Africa (USAASA) is a schedule 3A public entity established under the Electronic Communications Act (hereinafter referred as "the Act"), 2005 (Act No. 36 of 2005), as amended by Act No. 1 of 2014. The Agency's primary mandate is to oversee and regulate the implementation of universal service and access policies, as well as managing the Universal Service and Access Fund (USAF). The USAF provides financial support for initiatives aimed at bridging the digital divide and promoting universal access to telecommunications services.
- 1.2. As separate entities, USAASA and USAF receive distinct appropriations from the National Treasury, necessitating separate accounting and financial reporting. The Agencies fall under the portfolio management of the Department of Communications and Digital Technologies (DCDT), and are required to produce public statutory documents, including annual reports to the Executive Authority, National Treasury, Parliament and other stakeholders.
- 1.3. In terms of the ECA the Agency must:
 - 1.3.1. strive to promote the goal of universal access and universal service;
 - 1.3.2. encourage, facilitate and offer guidance in respect of any scheme to provide universal and access, universal services or telecommunication services in terms of the Reconstruction and Development Plan (RDP);
 - 1.3.3. foster the adoption and use of new methods of attaining universal access and universal service;
 - 1.3.4. make recommendations to enable the Minister to determine what constitutes universal access, universal service and under-serviced areas;
 - 1.3.5. research into and keep abreast of developments in the Republic and elsewhere on information communication technology, electronic communications services and electronic communications facilities; continually survey and evaluate the extent to which universal access and service have been achieved;
 - 1.3.6. make recommendations to the Minister concerning policy on any matter relating to universal access and universal service;
 - 1.3.7. advise the Independent Communications Authority of South Africa (ICASA) on any matter relating to universal access and universal service;
 - 1.3.8. continually evaluate the effectiveness of this Act and things are done in terms thereof towards the achievement of the goal of universal access and universal service;
 - 1.3.9. manage the Universal Service and Access Fund (USAF) in accordance with the provisions of the Act;
 - 1.3.10. submit annual reports in its operations, budget and expenses to the Minister;

- 1.3.11. utilise the USAF exclusively for the payment of certain subsidies; and
- 1.3.12. provide incentives to network licensees to construct operate and maintain networks in areas declared under-serviced by ICASA.

1.4. The Agency also manages the Universal Service and Access Fund (USAF) which is classified as a public entity in terms of the Public Finance Management Act, 1999 that must have its separate annual report from the Agency on the performance information and state of financial affairs.

2. OBJECTIVE

2.1. According to section 55 of the Public Finance Management Act, the Accounting Authority of a public entity is responsible for maintaining accurate financial records and preparing financial statements in accordance with accepted accounting practices. These financial statements must be submitted to auditors within two months of the financial year-end and to the relevant treasury within five months. Additionally, an annual report on the public entity's activities during the financial year must be submitted to the relevant treasury, Executive Authority, and Auditor-General within five months of the financial year-end. The objective of this request is to appoint a competent service provider to conceptualise, design layout and print the USAASA and USAF 2025/26 Annual Reports as per the following specifications.

3. SCOPE OF WORK / TERMS OF REFERENCE

3.1. Technical:

- 3.1.1. USAASA: approximately 170 pages excluding cover pages
- 3.1.2. USAF: approximately 170 pages excluding cover pages
- 3.1.3. Design cover page and back page for the Annual General Meeting pack
- 3.1.4. Size: A3 folded to A4
- 3.1.5. Orientation: Portrait
- 3.1.6. Pages Cover: 4 pages, 2 USAASA and 2 USAF
- 3.1.7. Colour: Full Colour Throughout
- 3.1.8. Paper Cover: 300gsm Matt Art
- 3.1.9. Inside paper: 128gsm
- 3.1.10. Finishing: Inner pages' machines throughout, cover spot gloss
- 3.1.11. Ultraviolet (UV) Varnished
- 3.1.12. Perfect Bound
- 3.1.13. Online magazine looks for both USAASA and USAF

3.2. Stock photos

- 3.2.1. The appointed service provider must provide professional photography services for leadership portraits and institutional imagery to be used in the USAASA and USAF Annual Reports.
- 3.2.2. A minimum of fifteen (15) high-quality images that align with USAASA's mandate, sourced either through professional photography or licensed stock images where necessary.

3.3. Professional Photography

- 3.3.1. The service provider must conduct the photography sessions at the USAASA Head Office, or another location approved by USAASA and must coordinate schedules with the Communications /Brand unit to photograph Board and EXCO members.

3.4. The photography services must include:

- 3.4.1. Six (6) professional portraits of USAASA Board Members
- 3.4.2. Ten (10) professional portraits of EXCO Members

3.5. The photographs must:

- 3.5.1. Be high-resolution and suitable for both print and digital publication
- 3.5.2. Be aligned with USAASA Corporate Identity standards

3.5.3. Be consistent in style, lighting, background and framing

3.5.4. Reflect a professional government leadership profile

3.6. The service provider must also provide:

3.6.1. Professional lighting and photography equipment

3.6.2. Photo editing and retouching

3.6.3. Final images in high-resolution print format and web format

3.7. The appointed service provider must provide professional grooming and make-up artist services during the photography sessions for Board and Executive Committee members. The make-up artist must ensure a natural, camera-ready appearance suitable for professional corporate portraits used in both print and digital publications.

4. Conceptualisation:

4.1. Theme and style customised according to the Corporate Identity Manual of USAASA and ICT Landscape and Rural South Africa

4.2. Author's Corrections

5. Design and Layout:

5.1. **Design:** The Service provider is required to submit a draft electronic design concept document, and layout of the annual report, taking into account the specified theme utilising the USAASA and USAF corporate identity guidelines.

5.2. Bidders must factor in three electronic (3) drafts for USAASA and USAF Annual Performance documents.

5.3. High-Resolution scanning, photographic manipulation, etching and cropping, where required.

5.4. Delivery formats for online version – PDF and flipbook HTML5.

5.5. The infographics must be data-driven and aligned with DPME performance reporting guidelines.

6. Content Management:

6.1. **The compilation (Content management):** the development of crisp content for an annual report which interprets USAASA and USAF performance against stated objectives.

6.2. **Editing the developed forewords** for the Chairperson of the Board, ACEO, Chairperson of Board Audit and Risk Committee and the Chairperson of the Social and Ethics Committee for both USAASA and USAF using the following guides:

6.2.1. Introduction

- 6.2.2.A high-level overview of the public entity's strategy and the performance of the public entity in its respective sector
- 6.2.3.Strategic Relationships
- 6.2.4.Medium to long term goals of the entity
- 6.2.5.General financial review of the public entity
- 6.2.6.Spending trends of the public entity
- 6.2.7.Capacity constraints and challenges facing the public entity
- 6.2.8.Discontinued activities/activities to be discounted
- 6.2.9.New or proposed activities
- 6.2.10. Requests for rollover of funds
- 6.2.11. Supply chain management
- 6.2.12. Challenges experienced and how they will be resolved
- 6.2.13. Audit report matters in the previous year and how they would be addressed
- 6.2.14. Outlook/Plans for the future to address financial challenges
- 6.2.15. Events after the reporting date
- 6.2.16. Economic viability
- 6.2.17. Acknowledgement/s or appreciation
- 6.2.18. Other (information that needs to be communicated to users of Annual Financial Statements)
- 6.2.19. The interviews must be in line with the National Treasury Annual Report Guide for Schedule 3A and 3C Entities.

6.3. Editing and proofreading: Editing and proofreading of the content to ensure consistency of language style and appropriate use of language, grammar and spelling checks.

6.4. Production and Printing:

- 6.4.1.Packaging, printing and production – including use of the specified paper, managing the printing process, the formatting and packing of the report for electronic/online and hard copy delivery as per specified timeframes that would be communicated with the appointed service provider. Computer to press lithographic printing.
- 6.4.2.The Annual Report should also be designed to seamlessly transition into an online magazine format, ensuring a cohesive and engaging digital experience for stakeholders. The layout will be responsive, optimised for various devices including desktops, tablets, and smartphones.
- 6.4.3.The
- 6.4.4.design will prioritise user experience, with intuitive navigation and visually appealing graphics that align with the brand's identity. The online magazine

version will leverage for modern web standards, ensuring compatibility across different browsers.

6.5. Content:

6.5.1.The content will be developed and extracted from relevant executives and business unit reports.

6.5.2.The annual financial statements will be supplied in PDF format and other reports will be supplied in Word format. The successful bidder will be expected to thoroughly edit and proofread all the content provided.

6.5.3.Financial content and performance information must not be altered in any way other than language edits, unless explicitly approved.

6.5.4.USAASA will be responsible for the final sign-off of the documents. A hard and soft copy of the entity's report will be provided to USAASA for final approval.

6.6. Design and Typesetting:

6.6.1.Design and typesetting will be done on edited and approved text, with at least three (3) alternative designs per entity' report to be forwarded to USAASA.

6.6.2.The service provider is expected to design geographical footprints, graphical displays and infographics (to be dominant in the report) based on information provided by USAASA and any other illustrations that may be used.

6.6.3.Designed in a magazine-style layout for online website consumption, it will combine compelling storytelling with visual elements to engage a broad audience.

6.7. Deliverable:

6.7.1.Printed **20** USAASA and **20** USAF Annual Reports delivered at USAASA Head Office in Midrand by **28th August 2026**

6.7.2.Print **15** Annual General Meeting packs of 205 pages and deliver to the USAASA Head Office by **14th August 2026**

6.7.3.A visually appealing, professional, and accessible Online magazine / publication looks for both USAASA and USAF (left to right page flipping)

7. Please note that the Evaluation of the submitted proposals will be based on three stages:

7.1. Stage 1: Mandatory Requirements

7.1.1. Stage 1 will entail checking compliance with the requirement below mandatory requirements.

7.1.2. Bidders who do not submit all mandatory requirements will be disqualified.

Mandatory		
The bidder must provide ID Copies of Directors of the company.		
Duly completed conflict declaration SBD 4		
Completed SBD 6.1 preference points claim		
Central Supplier Database report		
Valid copy of BBEE/ sworn affidavit		

Mandatory		
The bidder must submit their updated electronic and clear copy of their company profile.		

Mandatory		
The bidder must submit the following documents for the team to be assigned to USAASA:		
Curriculum Vitae for <ul style="list-style-type: none"> • Project Manager, with demonstrable public sector experience • Copywriter • Proof Reader/ Editor 		
Portfolio's for <ul style="list-style-type: none"> • Graphic Designer 		

Mandatory		
Bidders are required to demonstrate, by submitting prior experience of similar projects. A Minimum of 3 digital samples of the Annual Reports from previous work must be submitted with the proposal. All documents must be submitted in a searchable PDF and labelled correctly to avoid administrative disqualification.		

Note: Bidders that fail to comply with the above-mentioned mandatory requirements will be disqualified.

7.2. Stage 2: Technical/Functionality Stage

7.2.1. An assessment of Functionality will be based on the evaluation criteria noted in the table below. Each of the evaluation criteria in the table will carry a weighting as indicated, and the bidder will be required to score a minimum of 80 points (out of the 100 points), i.e. 80, for Functionality to qualify to proceed to Stage 3.

No	Criteria	Weight	Score
1	<p>a) The bidder must provide three digital annual reports in accordance with the requirements stipulated above: (10)</p> <ul style="list-style-type: none"> ▪ one out of the 3 digital annual report is compliant - 4 ▪ Two out of the 3 digital annual reports are compliant 7 ▪ Three and more digital annual reports are compliant - 10 	10	
	<p>COMPANY EXPERIENCE</p> <p>The bidder must have a minimum of three (3) years' experience demonstrating areas of competence relevant to the design and layout of an annual report. (15)</p> <ul style="list-style-type: none"> • Below 3-year experience - 5 • years' experience -10 • 3 and more years' experience - 15 <p>b) The bidder must provide three signed relevant contactable reference letters for work submitted from different clients (annual report) (10)</p> <ul style="list-style-type: none"> • Three and more references = 10 • Two references = 7 • One reference = 4 <p>The bidder must demonstrate experience in the development of an annual report for the public sector. (5)</p> <p>No demonstration experience in the development of an annual report for the public sector. (0)</p>	25	
2	<p>a)The bidder must demonstrate relevant experience in design, interpretation and creativity by submitting the following:</p> <p>Submit an annual report presentation design concept illustrating the service provider's interpretation of USAASA and USAFs performance in line with the Corporate Identity Manual. The 8 page concept should contain the following:</p> <ul style="list-style-type: none"> ▪ Page 1: Illustration of the front outside cover (2) ▪ No illustration of the front outside cover- 0 	20	

	<ul style="list-style-type: none"> ▪ Page 2: Illustration of what the Board of Directors profile will look like, photographic and layout styles to be used.(2) ▪ No Illustration of what the Board of Directors profile will look like, photographic and layout styles to be used- 0 ▪ Page 3: Illustration of what the chief executive officer's report will look like (2) ▪ No : Illustration of what the chief executive officer's report will look like-0 ▪ Page 4: Illustration of what the chief financial officer's review will look like (2) ▪ No Illustration of what the chief financial officer's review will look like- 0 ▪ Page 5: Illustration of what the business unit reports will look like (a one-unit report is sufficient) (2) ▪ No Illustration of what the business unit reports will look like (a one-unit report is sufficient) ▪ Page 6: Illustration of what the financial statements will look like (2) ▪ No Illustration of what the financial statements will look like-0 ▪ Page 7: Illustration of what the Human resources section will look like (2) ▪ No : Illustration of what the Human resources section will look like-0 ▪ Page 8: Illustration of the outside back cover (2) <p>No Illustration of the outside back cover-0</p> <p>Correct Interpretation of the USAASA Corporate Identity Manual (4) Incorrect interpretation of the USAASA Corporate Identity Manual (0)</p>		
3	<p>BIDDER'S PROPOSED METHODOLOGY AND WORK PLAN</p> <p>a) The bidder must demonstrate a thorough understanding of the objectives and deliverables of this project.</p> <p>The bidder must provide a detailed proposal/methodology clearly stating how the bidder plans to coordinate the project from design to printing. The bidder must also provide an indicative work/project plan with clear deliverables and timeframes based on the indicated deadline for delivery of Annual Reports. (15)</p>	30	

	<ul style="list-style-type: none"> ▪ Detailed project plan with time frames- 15 ▪ Detailed project plan with no times frames -10 ▪ No detailed project plan- 0 <p>a) PROJECT MANAGEMENT TEAM</p> <p>The bidder's proposed project management team comprises a minimum of three members and the team must demonstrate a track record/experience in project management, design and copyright /editing. (15)</p> <ul style="list-style-type: none"> ▪ Below three members with track record/ experience- 0 ▪ Three members with track record/experience- 10 ▪ More than three members with track record/experience – 15 <p>A detailed project plan with activities clearly costed per item (all inclusive) needs to be submitted with time frames not going beyond 28th of August 2026</p>		
4	<p>WRITING, EDITING AND PROOFREADING TEAM</p> <p>The bidders must submit, as part of their proposal, the following:</p> <ul style="list-style-type: none"> ▪ Submit the edited foreword provided by USAASA ▪ Editing (5) ▪ Grammatically correct (5) ▪ Proofreading (5) 	15	
TOTAL		100	

8. Stage 3: Pricing Stage

8.1. If the bidder attained 80 points or more in Stage 2 the bidder will now be evaluated for Price in terms of the 80/20 preference point system, where 80 points will be for Price and 20 points will be for preference points.

8.2. The points scored in respect of B-BBEE contribution (i.e. PPPFA status) will be added to the points scored for price.

8.3. The following formula will be used to calculate the points for Price:

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

Where

Ps = Points scored for the comparative price of proposal or quotation

Pt = Comparative price of proposal or offer

P min = Comparative price of lowest acceptable proposal or offer

9. Proposed Methodology:

9.1. The bidder must provide a detailed proposal, articulating, amongst other things, the following:

9.1.1. Methodology/approach to be used to carry out the assignment as per TOR. The bidder's proposal must clearly and separately deal with the immediate scope and ad hoc services;

9.1.2. Proposed timelines for delivering on the immediate scope; and indicative response times for attending and delivering on ad hoc services; and

9.1.3. Proposals should be submitted with an index and partitioned for easy reference.

9.1.4. Quotations should provide detailed costing for each of the above services outlined above.

10. Conditions

10.1. The successful bidder shall provide the service required based on the timelines set below:

10.1.1. Avail themselves on USAASA's request.

10.1.2. A first draft (excluding audited financial and non-financial performance and audit report) USAASA and USAF 2025/26 ARs be available on 17th of July 2026.

10.1.3. A designed concept, layout printers' proof to be available on 7th of August 2026.

10.1.4. Final electronic USAASA and USAF Annual Reports available by 14th of August 2026.

10.1.5. Printed AGM packs on 14th of August 2026; and

10.1.6. Final printed USAASA and USAF Annual Reports to be available by 28th of August 2026.

10.2. Pricing should be itemised according to the specifications provided in sections 3.1 to 6 above and must be an all-inclusive fixed amount.

11. Submission of Bids

- 11.1. Electronic bids must be submitted comprising of bid response including an electronic designed and layout, design concept document, design and layout of the annual report of USAASA and USAF and copies of the previous work done by the service provider.
- 11.2. Late or incomplete bids will not be considered, and non-compliance with digital format standards (e.g. broken links) may lead to disqualification.
- 11.3. USAASA may request clarification or further information regarding any aspect of the bidder. The bidder must provide the requested information within twenty-four (24) hours after the request has been made; otherwise, the bidder may be disqualified.
- 11.4. For Technical Enquiries please contact Ms Keitumetse Maloka, Brand Communications Specialist at Keitumetse@usaasa.org.za
- 11.5. For any Supply Chain enquiries please contact Ms Violet Masaele SCM: Officer, at 011 564 1637/1600 during office hours (08h00 – 16h30) or violet.masaele@usaasa.org.za/lydiam@usaasa.org.za

12. Closing Date of Proposal

- 12.1. A comprehensive proposal together with quotations meeting the requirements above must reach USAASA by no later than **29 May 2026, by 11h00**.
- 12.2. Proposals in electronic copy must be forwarded to scm@usaasa.org.za
Copy violet.masaele@usaasa.org.za and lydiam@usaasa.org.za

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

2.2 Do you, or any person connected with the bidder, have a relationship

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.

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.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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.

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

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

1.2 **To be completed by the organ of state**

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

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

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

$$Ps = 80 \left(1 + Pt \frac{80/20}{Pmax} - Pmax \right) \text{ or } Ps = 90 \left(1 + Pt \frac{90/10}{Pmax} - Pmax \right)$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black Ownership		20		

NB: Preferential Points for Black Ownership will be awarded as follows:

Black Ownership	% of Preferential Points
Bidders with 100% Black Ownership	100%
Bidders with 51% to 99% Black Owned	50%
Bidders with less than 51% Black Owned	0%

DECLARATION WITH REGARD TO COMPANY/FIRM

- 4.3. Name of company/firm.....
- 4.4. Company registration number:
- 4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
 - One-person business/sole propriety
 - Close corporation
 - Public Company
 - Personal Liability Company
 - (Pty) Limited
 - Non-Profit Company
 - State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct; ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

<p>.....</p> <p>SIGNATURE(S) OF TENDERER(S)</p> <p>SURNAME AND NAME:</p>

DATE:

.....

ADDRESS:

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.....

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GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

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

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

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with

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

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

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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.

