



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

RTD 01-2024/25

<b>TENDER DESCRIPTION:</b>	<b>TENDER FOR THE APPOINTMENT OF PROFESSIONAL TECHNICAL ADVISORS TO THE MINIBUS TAXI INDUSTRY ON THE CITY OF TSHWANE INTEGRATED RAPID PUBLIC TRANSPORT NETWORK (IRPTN) PROJECT FOR A PERIOD OF THIRTY-SIX (36) MONTHS</b>
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**NAME OF BIDDER:** .....

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

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

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

<b>BID CLOSING DATE</b>	<b>03 October 2024</b>
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Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

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



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**DEPARTMENT: ROADS AND TRANSPORT**

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
RTD 01- 2024/25	<b>TENDER FOR THE APPOINTMENT OF PROFESSIONAL TECHNICAL ADVISORS TO THE MINIBUS TAXI INDUSTRY ON THE CITY OF TSHWANE INTEGRATED RAPID PUBLIC TRANSPORT NETWORK (IRPTN) PROJECT FOR A PERIOD OF THIRTY-SIX (36) MONTHS</b>	Roads and transport	Technical enquiries: Kgagelo Shoroma ( <a href="mailto:kgaugelosh@tshwane.gov.za">kgaugelosh@tshwane.gov.za</a> or 012 358 7286)	N/A	03 October 2024 at 10:00am

**THE DOCUMENT IS DOWNLOADABLE ON THE TSHWANE WEBSITE ([www.tshwane.gov.za](http://www.tshwane.gov.za)) and on the E-tender portal.**

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

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

**Tshwane House  
320 Madiba Street  
Pretoria CBD  
0002**

**Documents must be deposited in the bid box not later than 10:00 on 03 October 2024**

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

- Technical enquiries: Kgaugelo Sharoma ([kgaugelosh@tshwane.gov.za](mailto:kgaugelosh@tshwane.gov.za) or (012 358 7286)
- Supply chain enquiries: Lukkiet Thobejane-Selowe (012 358 6282 or [lukkiet3@tshwane.gov.za](mailto:lukkiet3@tshwane.gov.za))

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

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

## INDEX

Number	Details	Document	Page
1.	Very important notice on disqualifications		
2.	Certificate of authority for signatory		
3.	Scope of work		
4.	Pricing schedule		
5.	Invitation to bid	MBD 1	
6.	Pricing schedule: Firm prices (purchases)	MBD 3.1	
7.	Pricing schedule: Non-firm prices (purchases)	MBD 3.2	
8.	Declaration of interest	MBD 4	
9.	Declaration for procurement above R10 million (all applicable taxes included)	MBD 5	
10.	Preference points claim form in terms of the preferential procurement regulations 2022	MBD 6.1	
11.	Contract form: Rendering of service	MBD 7.2	
12.	Declaration of past supply chain management practice	MBD 8	
13.	Certificate of independent bid determination	MBD 9	
14.	General conditions of contract		
15.	Service-level agreement		
<b>LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT</b>			
16.	Company registration certificate		
17.	Rates and taxes or lease agreement		
18.	Unique PIN		
19.	CSD summary report		

## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil or Tippex corrections were made, or any other colour ink. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
  - (a) who is in the service of the state;
    - i. if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
    - ii. who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.
10. Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorised to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.
11. All MBD documents fully completed (i.e. no blank spaces) and fully signed? By the authorized personnel.
12. False or incorrect declarations on any of the MBD documents will result in the rejection of the bidder.

- 13 It is the responsibility of the bidder to disclose in MBD4 any interest in any other related companies or business whether they are bidding for this contract. Failure to disclose this interest will result in the rejection of the bid.
- 14 Joint Ventures (JV) – (Only applicable when the bidder tender as a joint venture)
- i. Where the bidder bid as a Joint Ventures (JV), the required or relevant documents under administrative requirements must be provided/submitted for all JV parties. (These include MBD4, MBD5, MBD8, MBD 9, CSD and/ or SARS pin, Confirmation that the bidder’s municipal rates and taxes are up to date.)
  - ii. In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.
  - iii. It is a condition of this bid that the successful bidder will continue with same Joint Venture (JV) for the duration of the contract, unless prior approval is obtained from City of Johannesburg.
  - iv. JV agreement must be complete, relevant and signed by all parties.

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

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**Bidder**

**CERTIFICATE OF AUTHORITY FOR SIGNATORY**

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

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

**A. COMPANY**

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

An example is shown below:

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

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

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

**DATE:** .....

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

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

2. ....

**B. PARTNERSHIP**

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

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

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

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

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

**C. ONE-PERSON BUSINESS**

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

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

**D. CLOSE CORPORATION**

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

An example is shown below:

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

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

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

**DATE:** .....

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

**WITNESSES:**     1. ....

                          2. ....

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

This returnable schedule is to be completed by joint ventures.

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

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

**APPOINTMENT OF PROFESSIONAL TECHNICAL ADVISORS TO THE MINIBUS TAXI INDUSTRY ON THE CITY OF TSHWANE INTEGRATED PUBLIC TRANSPORT NETWORK (IPTN) PROJECT FOR A PERIOD OF THIRTY-SIX (36) MONTHS.**

**SPECIFICATIONS:**

**SPECIFICATIONS TO BE APPROVED BY THE BID SPECIFICATION COMMITTEE:**

**SCOPE OF WORK FOR THE TAXI INDUSTRY TECHNICAL ADVISORS (TITAS)**

**1. INTRODUCTION AND PURPOSE**

The City of Tshwane Metropolitan Municipality (CoT) is in the process of extending their Memorandum of Agreement (MoA) with the Tshwane Taxi Industry (TTI) Affected Operators, as part of the on-going mechanism for active engagement processes in the implementation of the IPTN. The initial MOA signed with the TTI during 2013, which has since expired, enabled a smooth transition of the affected minibus taxi industry operators into a formalized environment of engagement with the CoT. The process of securing cooperation and active participation of the affected public transport operators has proven to be a critical success factor to the implementation of the CoT IPTN. This was achieved through technical advisory support to the minibus taxi industry.

The purpose for these Terms of Reference is to explicitly outline the CoT's requirements and to provide a clear expectations of the deliverables and scope of work with regards to the appointment of a qualified and experienced Technical Advisory for Taxi Industry to assist the CoT, in particular the Department of Roads and Transport's Integrated Rapid Public Transport Network (IRPTN) Division to provide legal, transport planning, financial advisory and industry liaison support to the TTI, and to support and advise the TTI in the negotiations between CoT and the TTI and to enter into negotiated agreements with Affected Operators.

**2. BACKGROUND**

The improvement of public transport is one of the key strategic focus areas for the CoT. Public transport plays a vital role in providing all citizens and visitors with access to opportunities and facilities, whether for economic, education, health, recreation or social purposes. Provision of a quality public transport service is essential to create a substantial shift from private to public transportation, thus increasing public transport

market share, revenue generation, urban efficiency and improving air quality. Effective and efficient public transport is critical to the social and economic development of urban areas and the country as a whole.

The CoT has embarked on a process of implementing an Integrated Public Transport Network (IPTN) in line with its CITP, which has resulted in a need for extensive engagement with public transport operators in terms of section 41 of the National Land Transport Act No. 5 of 2009 (NLTA) and its Regulations. These legislative prescripts of the NLTA provides for contracting authorities to enter into negotiated contracts with operators in their areas, with a view, to *inter alia*, integrate services forming part of “integrated public transport networks” and furthermore for the promotion of economic empowerment of small business or of persons previously disadvantaged by unfair discrimination. It is, therefore, a legislative requirement for the CoT, as contracting authority to negotiate with Affected Operators, the majority of whom own and operate minibus taxi services. It is recorded that these operators were historically disadvantaged and have always operated informal unscheduled public transport services, and it is further evident that there is definitely very limited skills capacity within the industry to enable them to participate in negotiations as contemplated in section 41 of the NLTA.

During 2019, the CoT approved an A Re Yeng 15-year roll out plan which provides for the implementation of their IPTN, which includes the bus rapid transport service named A Re Yeng Bus Rapid Transit. The roll-out plan provides for the implementation of the BRT services in phases, which saw the inception phase of the A Re Yeng operations commence in December 2014 between the Pretoria CBD and Hatfield. The second phase of implementation saw operations of the A Re Yeng services being extended from the CBD to Wonderboom at the beginning of 2018. A further extension of services from Hatfield to Mamelodi was implemented during mid-2021, which is currently being operated in mixed traffic in line with the CoT’s approved Optimization Strategy. Further extensions of services to Atteridgeville are envisaged to take place within the next three (3) years. The implementation of the A Re Yeng services therefore requires the removal of minibus taxi services along the affected routes to allow for an integration of public transport services within the CoT.

## **2.1. APPROACH TO THE NEGOTIATIONS WITH AFFECTED PUBLIC TRANSPORT OPERATORS**

Part of the approach adopted by the CoT in the implementation of its IPTN, is to focus primarily on negotiations with affected public transport operators in fulfilment of its legislative mandate in terms of section 41 of the NLTA.

The Service Provider will be required to provide independent technical support to members of TTI potentially affected by the implementation of A Re Yeng during the phases and the process of planning and implementing CoT IPTN.

While the CoT will appoint the Service Provider, the company is expected to be truly independent from the CoT in providing support to the Taxi Industry and various structures of the Taxi Industry in achieving the goals of the ITPN.

The division of responsibility between the CoT and the service provider will be as follows:

- The Service Provider will sign a Service Level Agreement with the CoT who will then manage this agreement, including doing the contract administration, monitoring and approval of invoices and the making of payments.
- The Service Provider will take instructions directly from representatives of the Affected Operators in terms of the services to be provided.

It is therefore necessary to appoint a suitably qualified and experienced service provider to ensure that the industry transition process and negotiations in particular produce the required results to allow for the speedy implementation of the IPTN and to empower the Affected Operators on critical and relevant information to make appropriate decisions.

The key objectives of CoT in engagement with the public transport Affected Operators as part of implementation of its IPTN is to achieve the following:

- (a) Share critical and relevant information about the IPTN to empower the Mini-Bus Taxi Affected Operators to make meaningful decisions.
- (b) Ensure that there is no competition with A RE Yeng Services once the Mini-Bus Taxi Affected Operators have been compensated and removed from operating a corridor served by A Re Yeng.

- (c) An efficient, reliable and affordable public transport service for the residents and visitors Tshwane.
- (d) Dedicated public transport services that will be provided by a contracted Bus Operating Company entirely owned by the affected public transport operators (Mini-Bus Taxi Affected Operators and Affected Bus Operators), the majority of which will be from the minibus taxi industry.
- (e) An appropriate compensation model for existing operators displaced from routes along which the IPTN will operate.
- (f) A negotiated Bus Operating Contract(s) that will be entered into by and between the CoT and the established Bus Operating Company.
- (g) After consultation with the BOC's transaction advisors and the BOC's Directors, appraise the minibus taxi affected operators on the BOC's fleet requirements for purposes of the BOC providing services in line with the City's IPTN.
- (h) Cooperation in the design and construction of universally accessible stations and stops along the A Re Yeng route alignment.
- (i) Possible job retention, job creation, reskilling and skills development for individuals currently employed by the minibus taxi industry Affected Operators.

The approach to negotiations with the affected public transport operators from the minibus taxi industry is designed to be inclusive, to educate and inform all stakeholders and to develop, as far as possible, a common support for the objectives of the A Re Yeng project. The initial focus in the negotiations was on the areas of common understanding to the extent of reaching consensus on the processes that have already unfolded. Subsequently, the CoT has continued to fulfil the commitments made to the minibus taxi industry affected operators, through various agreements that have been concluded.

The CoT has over the past ten (10) years since the commencement of engagements with the minibus taxi industry Affected Operators, been able to conduct a market research study, culminating in the identification of Affected Operators and payment of compensation for the removal of their minibus taxi vehicles. It is envisaged that there will be a further requirement for extensive engagements between the CoT and the minibus taxi industry Affected Operators in the expansion of the A Re Yeng services to other areas. The Taxi Industry Technical Advisors have in the past played a key role on the various phases of industry transition and the Taxi Advisors to be appointed

will therefore, play a highly critical role in the above regard going forward, to ensure continued cooperation by the industry in support of the CoT's plans.

### **3. PROGRESS ON ENGAGEMENTS WITH THE MINIBUS TAXI INDUSTRY (MBT) AFFECTED OPERATORS TO DATE**

The MBT Affected Operators in Tshwane are affiliated to the following representative structures:

- (a) Greater Tshwane Regional Taxi Council (GTRTC) – which is the official representative structure for twenty-five (25) minibus taxi associations operating within Tshwane. The GTRTC is an affiliate of the South African National Taxi Council (SANTACO).
  
- (b) Tshwane Gauteng National Taxi Alliance (TGNTA) – which is the official representative structure for sixteen (16) minibus taxi associations operating within Tshwane. The TGNTA is an affiliate of the National Taxi Alliance (NTA).

The CoT is in the process of finalizing and concluding a third Memorandum of Agreement (MoA) with the GTRTC and the TGNTA to as part of the continued regulation of all engagements pertaining to the implementation of the A Re Yeng system.

The following has been achieved through active, rigorous, yet harmonious and meaningful engagements between the CoT and the TTI:

- (a) Establishment of a Bus Operating Company (BOC) namely, Tshwane Rapid Transit (Pty) Ltd, which is to be 100% owned by the public passenger transport operators that are affected by the A Re Yeng service. The BOC has since been contracted to provide the A Re Yeng services since the commencement of bus operations for inception services in December 2014.

- (b) The CoT entered into two (2) MoA's with the GTRTC and the TGNTA to facilitate the implementation of the CoT's IPTN and is in the process of concluding a third MOA.
- (c) The initial MOA entered into by the parties established the following engagement structures through which the CoT and the TTI have formal and recorded meetings:
  - i. Tshwane Taxi Industry Steering Committee, which is a twenty-two (22) member committee comprises of 11 members each from the GTRTC and TGNTA respectively.
  - ii. Joint Steering Committee (JSC), which is a superior and decision-making body comprises of a representation of both the senior management of the CoT Roads and Transport Department and the senior leadership of both the GTRTC and the TGNTA.
  - iii. Taxi Industry and City of Tshwane Technical Committee (TICOT), which is a technical committee comprising of the professional taxi industry technical advisors and officials and technical advisors from the CoT IRPTN Division workstreams.
  - iv. Affected Operator Engagement Forums (AOEF), which are committees comprising of representatives from the various MBT Affected Operators and the appointed professional taxi industry technical advisors together with the officials and technical advisors from the CoT IRPTN Division workstreams.
- (d) The TICOT played a critical role as a technical committee tasked with engagements between the CoT and TTI culminating in a number of agreements reached in the interest of both parties. Key to these activities was the determination of the framework and process for negotiations between the CoT and the potentially affected public transport operators as represented by the TTI.
- (e) The agreements concluded were preceded by various activities that included a market research study in identification of the minibus taxi industry affected operators.

- (f) The identification of MBT Affected Operators for Phase 1 of the A Re Yeng system as outlined in the 15-year roll-out plan has been concluded.
- (g) Compensation Agreements were concluded with the MBT Affected Operators for Line 1A, 2A and 2B of the A Re Yeng system (Wonderboom to Menlyn).
- (h) The CoT has recently concluded negotiations with the BOC in terms of Section 41 of the NLTA, for the provision of services under the first Bus Operating Company Agreement (BOCA 1) for a period of twelve (12) years.

It is envisaged that other relevant agreements may be concluded with the Affected Operators in line with the CoT's 15-year rollout plan. Additional work that the CoT would need to undertake, *inter alia*, includes the activities outlined below:

- a) **Identification of public passenger transport operators** that will be affected by the subsequent phase(s) of the A Re Yeng system through a market research study to be commissioned by the CoT.
- b) **Verification of compliance of the MBT Affected Operators** as part of confirmation of their affectedness.
- c) **Determination of the process for vehicle removal and/or disposal** as part of the integration of services in line with the CoT IPTN.
- d) Provide a **framework for compensation of operators that will be affected** by and a process for the surrender, removal and/or disposal of their minibus taxi vehicles.
- e) In concurrence with the BOC's transaction advisors and in consultation with the Minibus Taxi Affected Operators conduct research and provide options for the structure and financing as part of **capitalisation of the BOC**.
- f) In concurrence with the BOC's transaction advisors and in consultation with the Minibus Taxi Affected Operators, develop **criteria for allocation of shareholding** by the affected public passenger transport operators.
- g) In concurrence with the BOC's transaction advisors and in consultation with the Minibus Taxi Affected Operators, **prepare guidelines for shareholder on-boarding** of affected public passenger transport into the BOC.

All the above activities are anticipated to be done through a process of consultations with the respective public transport industries, part of whom are minibus taxi operators. It is further envisaged that a formal negotiation process in terms of section 41 of the NLTA will be undertaken with the specific output of various signed Bus Operating Contract Agreements between the CoT and affected public passenger transport operators for the provision of bus operating services on the routes operationalized in terms of the CoT's 15-year rollout plan and the Optimization Strategy.

It is, therefore, necessary for the CoT to appoint suitably qualified and experienced professional technical advisors for the minibus taxi industry to ensure that the negotiations produce the required results to allow for the smooth transition and implementation of the A Re Yeng system.

The appointed Taxi Industry Technical Advisors (TITA) will, *inter alia*, be responsible for the activities as outlined in the scope of work in section 5 below.

### **3. SCOPE OF PROFESSIONAL SERVICES**

The appointed professional service provider will be required to continue providing independent technical support to the A Re Yeng affected operators during the various phases identified as part of the process of conclusion and implementation of the Bus Operating Contract Agreement(s).

Upon appointment of the professional service provider by the CoT, it is expected of their role to be solely independent in providing support to the MBT affected operators,

The division of responsibility between the CoT and the appointed professional service provider will be as follows:

- The appointed professional Service Provider will sign a Service Level Agreement (SLA) with the CoT;
- The appointed professional Service Provider will take instructions directly from the TTI in terms of the services set out below:

#### **3.1. Professional services to be provided.**

The successful professional Service Provider will be expected to provide properly qualified resources to offer the following services to the Affected Operators during the stages outlined below.

Phase:	Key Outputs:
Engagement and Pre-Negotiation Phase	<ul style="list-style-type: none"> <li>• Information sharing.</li> <li>• Building understanding.</li> <li>• Further information sharing and building understanding of the details of the phases to be negotiated.</li> <li>• Determine which routes are affected and thus which operators are eligible to become shareholders.</li> <li>• Registration of MBT Affected Operators.</li> <li>• Establishment of duly mandated negotiation terms set up agreement on a negotiation plan to guide the negotiation process.</li> <li>• Determination of who the final shareholders of the BOC will be from the MBT Affected Operators. (Note: <i>This should be done prior to the commencement of negotiations</i>)</li> </ul>
Negotiations	<p><b><u>Part 1: ORGANISE AND MANAGE THE RELATIONSHIP BETWEEN SHAREHOLDERS TO THE BUS OPERATING COMPANY FROM THE MBT</u></b></p> <p>During this phase the prospective shareholders of the BOC will have to negotiate with each other, put certain arrangements and agreements in place to regulate and control their relationship, rights and duties within such Bus Operating Company, <u>to the extent that it may be required to enable them to effectively engage the CoT during the negotiations on the Bus Operating Contract Agreement as shareholders and representatives of the Bus Operating Company.</u></p> <p>This phase may include issues (in whole or in part as may be required) such as:</p> <ul style="list-style-type: none"> <li>• Determination of the nature of the BOC, primarily by prospective shareholders.</li> <li>• <b>Shareholders Agreement:</b> Formalization of the relationship between shareholders to the Bus Operating Company.</li> <li>• <b>Incorporation of the BOC:</b> The Memorandum of Incorporation (MOI) of the new Bus Operating Company as required by the Companies Act (Act No 71 of 2008).</li> </ul> <p><b><u>Part 2: NEGOTIATIONS BETWEEN THE BUS OPERATING COMPANY AND THE COT TO CONCLUDE A 12 YEAR BUS OPERATING CONTRACT</u></b></p>

	<ul style="list-style-type: none"> <li>• This will include the formal negotiations of a 12-year bus operating contract between the CoT and the Bus Operating Company.</li> </ul> <p><b><u>Part 3: CONCLUSION OF THE BUS OPERATING CONTRACT</u></b></p> <ul style="list-style-type: none"> <li>• The bus operating contract must be concluded between the properly incorporated legal entity (Bus Operating Company) and the CoT.</li> </ul>
Preparation for BOC operations.	<p><b><u>Part 4: PROVISION OF TRAINING AND SUPPORT TO THE BOC IN PREPARATION OF COMMENCEMENT OF OPERATIONS</u></b></p> <ul style="list-style-type: none"> <li>• Training and orientation of prospective shareholders</li> <li>• Fulfilment of requirements of the Companies Act and all other legislation</li> <li>• Establishment of relevant shareholding structure</li> <li>• Disposal of MBT Affected Operator vehicles and provision of equity as agreed during the negotiations phase.</li> <li>• To the extent that it may not have been required to be done in the previous phase.</li> </ul>

### 3.2. Qualified Expertise Required

<b>Process</b>	<b>1) Peer Review, share Allocation and Possible Route Reduction</b>
<b>Qualified Expertise Required</b>	Transport Planning
<b>Description of Service</b>	<ul style="list-style-type: none"> <li>• Provide technical support advice to the MBT Affected Operators for their full understanding of the CoT IPTN and all associated its plans.</li> <li>• Provide technical support and advice through the process of peer review, finalization of seat allocation in line with all approved plans and strategies that are being implemented by the CoT.</li> <li>• Provide specialist advice on the allocation of the number of MBT vehicles to be removed by the CoT, per operator according to the agreed percentage market share.</li> </ul>
<b>Deliverables</b>	<ul style="list-style-type: none"> <li>• Identification of MBT Affected Operators.</li> <li>• Agreed share allocation methodology.</li> <li>• Operational Plan Review and make written Inputs as requested by the CoT.</li> <li>• Review and make written inputs to the BOC's Operational Plan.</li> </ul>

	<ul style="list-style-type: none"> <li>Review and make written inputs to the BOC's Contracts for purposes of assisting with aligning TTI's Capacity Building Programs</li> </ul>
<b>Process</b>	<b>2) Determination of negotiation plan and negotiating teams</b>
<b>Qualified Expertise Required</b>	Legal
<b>Description of Service</b>	<ul style="list-style-type: none"> <li>To provide legal advice to MBT Affected Operators in the negotiation process.</li> <li>To provide legal support and advice to parties that will be participating in the negotiations on behalf of the MBT Affected Operators.</li> </ul>
<b>Deliverables</b>	<ul style="list-style-type: none"> <li>Compensation Agreements, Signed Bus Operating Company Agreement.</li> <li>Properly constituted negotiating teams representing the MBT Affected Operators.</li> <li>Legal Comments (Witten).</li> <li>Legal Opinions.</li> <li>Review and make written inputs to the Affected Operator Participation Framework Agreement.</li> <li>Review and make written inputs to the Value Chain Agreement</li> <li>Employment, Re-deployment, Skills Audit and Skills Transfer Agreement.</li> <li>Review and make written inputs to the Negotiation Strategy Framework Agreement.</li> <li>Review and make written inputs to the Compensation.</li> <li>Framework Agreement.</li> </ul>
<b>Process</b>	<b>3) Financial Modelling and Business Planning</b>
<b>Qualified Expertise Required</b>	Finance
<b>Description of Service</b>	<ul style="list-style-type: none"> <li>To provide technical advice and support to the MBT on the BOC business plan, financial model and the compensation model developed by the CoT.</li> <li>To also advise the MBT Affected Operators on the financial terms and conditions of the contract period, the revenue i.e. fee/km, Escalation Formula etc., for the purpose of the negotiations of the BOCA.</li> </ul>
<b>Deliverables</b>	<ul style="list-style-type: none"> <li>Review and make written inputs to the BOC Business Plan.</li> <li>Review and make written inputs to the BOC Financial Model.</li> <li>Finalize Model Assumptions.</li> <li>Review and make written inputs to the Financial Model Peer City Review.</li> <li>Review and make written inputs to the Model Testing and Audit.</li> </ul>

	<ul style="list-style-type: none"> <li>• Review and make written inputs to the Business Value Determinations.</li> <li>• Review and make written inputs to the Finalization of Compensation Amounts.</li> <li>• Review and make written inputs to the Share Prospectus.</li> <li>• Review and make written inputs to the Share Allocation Report.</li> </ul>
<b>Process</b>	<b>4) Industry Liaison Support</b>
<b>Qualified Expertise Required</b>	Industry Transition
<b>Description of Service</b>	<ul style="list-style-type: none"> <li>• Liaison between TI (Associations, Operators), Technical Advisors and CoT.</li> <li>• Secretarial and administrative support</li> <li>• Assistance and support with photocopying, filing, scanning/emailing, document tracking and delivery of documents.</li> <li>• Logistical support with arranging meetings and venues for industry participants, transport and related logistics</li> </ul>
<b>Deliverables</b>	<ul style="list-style-type: none"> <li>• Register of Affected Operators.</li> <li>• Database of Affected Operators.</li> <li>• Database Maintenance</li> <li>• Industry Support</li> </ul>

### 3.3. REPORTING

Bidders will be required to prepare progress reports with each invoice and a close out report at the end of their contract. Full details of this requirement will be contained in the Service Level Agreement to be concluded between the CoT and the successful bidder.

Successful professional Service Provider will be required to prepare monthly invoices, supported by timesheets for each activity or tasks undertaken together with a Progress Report, which will include a summary of services rendered, which must include information that is not confidential or proprietary to the TTI, but with sufficient information to enable CoT to evaluate the efficacy of the related invoice. The service provider must provide the necessary supporting documentation as required by CoT.

The TTI Steering Committee Chairperson will be required to provide a certificate, confirming that the services have been satisfactorily provided as detailed in the Progress Report and monthly invoice, substantially in the form detailed below.

“The invoice of [Technical Advisor] (Pty) Ltd annexed hereto, and the related Progress Report, reflect a true and proper account of the services rendered by [Technical Advisor] to the TTI and the Affected Operators with regards to the Tshwane IPTN Project and the Taxi Industry Steering Committee is satisfied with the services provided.”

The CoT also reserves the right to check all claims before making payment.

#### 4. STAGES OF EVALUATION

The bids will be evaluated in four stages of evaluation, namely:

- i. **Stage 1:** Administrative Compliance
- ii. **Stage 2:** Mandatory Requirements
- iii. **Stage 3:** Functional Evaluation
- iv. **Stage 4:** Evaluation in terms of Preference Points System

##### 4.1 Stage 1: Administrative Compliance

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

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
<p>a) To enable The City to verify the bidder's tax compliance status, the bidder must provide;</p> <ul style="list-style-type: none"> <li>• A copy of their Tax Clearance Certificate (TCS).</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• Indicate their tax compliance status PIN.</li> </ul>		<p>TCS must be in the same business name as the bidding company.</p> <p>TCS must be valid.</p> <p>Tax status must be compliant before the award.</p>
<p>b) A copy of their Central Supplier Database (CSD) registration; or indicate their Master Registration Number / CSD Number;</p>		<p>CSD must be valid. Tax status must be compliant before the award.</p>
<p>c) Confirmation that the bidding company's rates and taxes are up to date: Original or copy of Municipal Account Statement of the Bidder (bidding company) not older than 3 months and account must not be in arrears for more than ninety (90) days; or ,signed lease agreement or In case of bidders located in informal settlement, rural areas or areas</p>		<p>Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to</p>

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
<p>where they are not required to pay Rates and Taxes a letter from the local councillor confirming they are operating in that area</p>		<p>date (i.e. not in arrears for more than 90 days?</p>
<p>d) In addition to the above, confirmation that all the bidding company's owners / members / directors / major shareholders rates and taxes are up to date: • Original or copy of Municipal Account Statement of all the South African based owners / members / directors / major shareholders not older than 3 months and the account/s may not be in arrears for more than ninety (90) days; or a signed lease agreement of owners / members / directors / major shareholders or In case of bidders located in informal settlement, rural areas or areas where they are not required to pay Rates and Taxes a letter from the local councillor confirming they are residing in that area</p>		<p>Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days?</p>
<p>e) Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorized to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.</p> <p><b>NB: Bidders must ensure that the directors, trustees, managers, principal shareholders, or stakeholders of this company,</b></p>		<p>All documents fully completed (i.e. no blank spaces)? All documents fully signed? Signature authorized (any director / member / trustee as indicated on the CIPC document, alternatively a delegation of authority would be required? Documents completed in black ink (i.e. no "Tippex" corrections, no pencil, no other colour ink, or <b>non-submission of the above</b>, will be considered)?</p>

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
<p><b>declare any interest in any other related companies or business, whether or not they are bidding for this contract. <u>See Question 3.14 of MBD 4. Failure to declare interest will result in a disqualification</u></b></p>		
<p>f) Financial Statements for the most recent three (3) years or financial statements from date of existence for companies less than three years old.</p> <p><b>NB:</b> The bidder must submit signed audited annual financial statements for the most recent three years, or if established for a shorter period, submit audited annual financial statements from date of establishment.</p> <p>If the bidder is not required by law to prepare signed annual financial statements for auditing purposes, then the bidder must submit proof that the bidder is not required by law to prepare audited financial statements.</p>		<p>Applicable for tenders above R10m in conjunction with MBD 5)</p> <p>Are Audited financial statements provided (Audited financials must be signed by auditor)? Or proof that the bidder is not required by law to prepare audited financial statements.</p>
<p>g) Joint Ventures (JV) – (Only applicable when the bidder tenders as a joint venture) Where the bidder bids as a joint venture (JV), the required or relevant documents as per (a) to (f) above must be provided for all JV parties. In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.</p> <p><b>NB:</b> It is a condition of this bid that the successful bidder will continue with the same Joint Venture (JV) for the duration of the contract unless prior approval is obtained from the City.</p>		<p>If applicable. JV agreement provided? JV agreement complete and relevant?</p> <p>Agreement signed by all parties? All required documents as per (i.e. a to f) must be provided for all partners of the JV.</p>

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
h) Bidder attended a compulsory briefing session where applicable		<p>A compulsory briefing register must be signed by the bidder.</p> <p><b>Bidders will be disqualified should they fail to attend compulsory briefing session</b></p>
i) Pricing schedule (All items must be quoted for in pricing schedule and if not, all items are quoted the bidder will be disqualified). Unless the tender is awarded per item or per section where the bidder only quoted the items or sections, they are interested in.		<p>Incomplete pricing schedule results in totals being incomparable. Bidder must be disqualified.</p> <p><b>Bidder will be disqualified should they make corrections on the price schedule without attaching a signature thereto.</b></p> <p><b>Bidder will be disqualified should they use tippex/ correction ink, on the price schedule.</b></p>

#### 4.2 Stage 2: Mandatory Requirements

The bidder should submit the following mandatory requirements and failure to do so will lead to immediate disqualification:

Curriculum Vitae (CV) of the 4 Key personnel team is compulsory to be detailed with relevant experience as outlined in the below table. Supporting documents to the CVs are certified copies of qualifications and professional registration (where applicable).

**NB! Bidders should not fill in the table below, table to be completed by CoT SCM officials.**

No.	Returnable Document	Documentation Submitted		
		Yes	No	
CVs and Certified Copies of Academic Qualifications for the Project Manager and Other 4 Key Personnel, with the relevant experience and professional registration required.				
4.2.1.	<b>Financial and Business Planning</b>	<ul style="list-style-type: none"> <li>Minimum National diploma and/or Degree qualification in BCom Finance or higher qualification</li> </ul>		
		<ul style="list-style-type: none"> <li>Minimum of 5 years' experience</li> <li>Experience in technical advisory service in public transport both bus and taxi operations (IPTN).</li> </ul>		
<b>NB! Technical Advisory Services comprises of:</b> <ul style="list-style-type: none"> <li>Explain and/or outline the IPTN/A Re Yeng financial model plan to the TTI and associated MBT Affected Operators.</li> <li>Advise the TTI and associated MBT Affected Operators on reviewing the funding models.</li> <li>Advise the TTI and associated MBT Affected Operators on the funding option analysis and recommendations.</li> <li>Technical advice TTI and associated MBT Affected Operators on the financial plan compliance with the MFMA and other municipal finance regulations.</li> <li>Advise on the funding model and agreements in relation to servicing the funding/loan/s.</li> <li>Advise on the establishment and/or running of the relevant shareholding structures.</li> <li>Development of the Shareholder Prospectus.</li> <li>Taxation related matters.</li> </ul>				

4.2.2.	<b>Legal and Contract Manager</b>	<ul style="list-style-type: none"> <li>• Minimum Degree in Law or LLB</li> </ul>		
		<ul style="list-style-type: none"> <li>• Minimum of 5 years demonstratable experience in technical advisory services of the IPTN(Public Transport Operations in Buses &amp; Taxis)</li> </ul>		

**NB! Technical Advisory Services comprises of:**

- Advise the TTI and associated MBT Affected Operators on all legal matters relating to the A Re Yeng project.
- Assist the TTI and associated MBT Affected Operators in the interpretation of all legal documentation and agreements pertaining to the A Re Yeng project.
- Advise the TTI and associated MBT Affected Operators on the full details of the compensation agreements that will be entered into with the CoT
- Advise the TTI and associated MBT Affected Operators on all tax related matters.

4.2.3.	<b>Public Transport Planner</b>	<ul style="list-style-type: none"> <li>• A Degree in Transportation Planning or Higher</li> </ul>		
		<ul style="list-style-type: none"> <li>• Minimum of 5 years' experience in technical</li> </ul>		

		advisory services of the IPTN(Public Transport Services _ Bus & Taxis)		
<b>NB! Technical Advisory Services comprises of:</b>				
<ul style="list-style-type: none"> <li>• Provide technical advice to the TTI and associated MBT Affected Operators on the operational plans and the review thereof.</li> <li>• Provide technical advice to the TTI and associated MBT Affected Operators on the outcome of all market research studies conducted by the CoT, which shall <i>inter alia</i>, include the methodology applied in the collection of the MBT Affected Operator data.</li> <li>• Provide technical advice to the TTI and associated MBT Affected Operators on the demand model input and output.</li> </ul>				
4.2.4	<b>Industry Liaison Support</b>	<ul style="list-style-type: none"> <li>• National Diploma in Business Administration or Higher</li> <li>• Minimum 2 years demonstratable experience in project admin</li> </ul>		
4.2.5	<b>Relevant Company Experience</b> Bidder listed a minimum of one (1) contactable reference where Bidder has conducted facilitation on Integrated Public Transport Network for both bus and/or taxi industry (IPTN)			
4.2.6	<b>Company Organogram Submission</b> Bidders to submit an organogram showing all personnel in the project and reporting lines			
4.2.7	Proposal: The approach should be based on the scope of work on how activities will be implemented and a detailed corresponding project plan. The proposal shall include the following;			

	Legal and Contract management Finance and Business Planning Public Transport planning Industry Liaison support		
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- **NB! Failure to submit the above-mentioned documents will result in disqualification.**

### Stage 3: Functional Evaluation

Bidders must score a minimum of 70 points out of a total 100 to be evaluated further.

The table below will be used for evaluation of the responses to be provided.

Quality Criteria	Sub-Criteria	Scale	Weight	Maximum Points
Company Experience in Technical Advisory Services to the Taxi Industry on IPTN Projects  (Technical Advisory in IPTN projects completed)	<b>5 and more projects</b> completed.  <i>(signed reference letter with contactable references)</i>	5	5	25
	<b>3- 4 projects</b> completed.  <i>(signed reference letter with contactable references)</i>	4		
	<b>1-2 projects</b> completed.  <i>(signed reference letter contactable references)</i>	3		
Key Personnel Experience: <b>Public Transport Planner</b>	more than 10 years' experience working with Taxi industry/ and IPTN.	5	5	25
	10 years' experience working with Taxi industry/ and IPTN	4		
	From 5 to 9 years experience working with Taxi industry/ and IPTN	2		
<b>Legal and Contract Manager</b>	More than 10 years' experience working with Taxi industry/ and IPTN.	4	5	20

	10 years' experience working with Taxi industry/ and IPTN	3		
	From 5 to 9 years' experience working Taxi Industry/IPTN	2		
<b>Financial and Business Planner</b>	More than 10 years' experience working with Taxi and Bus industry/ and IPTN.	4	5	20
	10 years' experience working with Taxi and Bus industry/ and IPTN	3		
	From 5 years experience working with Public Transport Taxi and Bus industry/ and IPTN	2		
<b>Industry Liaison Support</b>	From 2 years' and above experience in project admin	2	5	10
	1 year experience in project admin	1		
<b>Maximum Possible Score</b>				100

## 5. Stage 4 80/20 PREFERENTIAL POINT SYSTEMS

80 price

20 specific goals

- 1) Bidders are required to submit supporting documents for their bids to claim the specific goal points.
- 2) Non-compliance with specific goals will not lead to disqualification but bidders will not be allocated specific goal points. Bidders will score points out of 80 for price only and zero (0) points out of 20 for specific goals.
- 3) Cot shall act against any bidder or person when it detects that the specific goals were claimed or obtained on a fraudulent basis.

The specific goal for this bid is outlined below.

Specific goals	80/20 preference point system	Proof of specific goals to be submitted
BB-BEE score of companies <ul style="list-style-type: none"> <li>• Level 1</li> <li>• Level 2</li> <li>• Level 3</li> <li>• Level 4</li> <li>• Level 5</li> <li>• Level 6</li> <li>• Level 7</li> <li>• Level 8</li> <li>• Non-compliant</li> </ul>	<ul style="list-style-type: none"> <li>• 8 Points</li> <li>• 7 Points</li> <li>• 6 Points</li> <li>• 5 Points</li> <li>• 4 Points</li> <li>• 3 Points</li> <li>• 2 Points</li> <li>• 1 Point</li> <li>• 0 Points</li> </ul>	Valid Certified copy of BBBEE certificate. Sworn Affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate.
EME and/ or QSE	2 Points	Valid Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate
At least 51% of Women-owned companies	2 Points	Certified copy of Identity Document/s <b>and</b> proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by People with disability	2 Points	Medical Certificate with doctor's details (Practice Number, Physical Address, and contact numbers) and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by Youth	2 Point	Certified copy of Identity Document/s <b>and</b> proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
Local Economic Participation <ul style="list-style-type: none"> <li>• City of Tshwane</li> <li>• Gauteng</li> <li>• National</li> </ul>	4 Points  2 Points  1 Point	Municipal Account statement/Lease agreement.

## 12 TYPE OF AGREEMENT REQUIRED

Draft Service Level Agreement attached as Annexure C

### **13 VALIDITY PERIOD**

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

### **14 CONDITION OF THE TENDER**

Capacity Building and Skills Transfer

The bidder that is successfully appointed on the project will be required to provide a minimum of 8 hours a month mentoring to students and employees of the City and a skills transfer plan that will demonstrate how skills transfer will be conducted. There is no certification to be issued for this training. It is envisaged that one trainee per workstream. The time and expenses for mentoring will NOT be remunerated separately and should be included in the normal fees priced. This will be seen as giving back to the community and transferring of skills.

**ANNEXURE B  
PRICING SCHEDULE**

- The activity schedules must be completed in full.
- The tender will be awarded as a whole to one service provider
- All costs must be reflected including all costs, expenses and disbursements.
- Columns (A x B =C)
  
- Columns (C x 36 months = D Total Excluding VAT)

**ALL RATES AND AMOUNTS TO EXCLUDE VAT**

Item No:	Workstreams and Process	Unit of Measure	Estimated Rate per Hour (A)	Estimated Hours per Month (B)	Estimated Cost per Month (C)	Estimated cost for 36 Months (Cx36) (D)
1.	Financial and Business Planner	Hour		120		
2.	Legal and Contract Manager	Hour		120		
3.	Public Transport Planner	Hour		120		
4.	Industry Liaison Support	Hour		160		
<b>Total Excluding VAT</b>						
<b>VAT @ 15%</b>						
<b>Total Including VAT</b>						

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	RTD 01-2024/25	CLOSING DATE:	03 October 2024	CLOSING TIME:	10:00am
DESCRIPTION	<b>TENDER FOR THE APPOINTMENT OF PROFESSIONAL TECHNICAL ADVISORS TO THE MINIBUS TAXI INDUSTRY ON THE CITY OF TSHWANE INTEGRATED RAPID PUBLIC TRANSPORT NETWORK (IRPTN) PROJECT FOR A PERIOD OF THIRTY-SIX (36) MONTHS</b>				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

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

<b>Tshwane House</b>					
<b>Supply Chain Management</b>					
<b>320 Madiba Street</b>					
<b>Pretoria CBD</b>					
<b>0002</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes  <input type="checkbox"/> No

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

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	Kgaugelo Sharoma
CONTACT PERSON	Lukkiet Thobejane-Selowe	TELEPHONE NUMBER	012 358 7286
TELEPHONE NUMBER	012 358 6282	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	<a href="mailto:kgaugelosh@tshwane.gov.za">kgaugelosh@tshwane.gov.za</a>
EMAIL ADDRESS	<a href="mailto:lukkiet3@tshwane.gov.za">lukkiet3@tshwane.gov.za</a>		

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION</b>	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.

- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

- 3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES  NO
- 3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES  NO
- 3.3 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES  NO
- 3.4 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES  NO
- 3.5 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 ABOVE.**

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

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

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

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

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

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

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

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

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

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

\* Delete if not applicable

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

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

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

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

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

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

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

**PRICE ADJUSTMENTS**

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

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

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

Where:

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

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

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

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

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


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

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

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

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

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

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

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

**DECLARATION OF INTEREST**

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

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

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

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

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

3.9.1 If yes, furnish particulars. ....

.....

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

3.10.1 If yes, furnish particulars. ....

.....

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

3.11.1 If yes, furnish particulars. ....

.....

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

3.12.1 If yes, furnish particulars. ....

.....

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

3.13.1 If yes, furnish particulars. ....

.....

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

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

.....

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

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

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

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

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

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

.....  
.....

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

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

2.2 If yes, provide particulars.

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

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

3.1 If yes, furnish particulars

.....  
.....

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

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

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

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

.....  
Signature

.....  
Date

.....  
Position  
Name of Bidder

.....

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

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

a) The applicable preference point system for this tender is the 80/20 preference point system.

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

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

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

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>TOTAL POINTS FOR PRICE AND SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

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

**2. DEFINITIONS**

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

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

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

**3.1. POINTS AWARDED FOR PRICE**

**3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

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

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right) \text{ or } Ps = 90 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

- Ps = Points scored for price of tender under consideration
- Pt = Price of tender under consideration
- Pmin = Price of lowest acceptable tender

**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:

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) \text{ or } Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

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.)***

Specific goals	80/20 preference point system	Number of points claimed (80/20 system) (To be completed by the tenderer)
BB-BEE score of companies <ul style="list-style-type: none"> <li>• Level 1</li> <li>• Level 2</li> <li>• Level 3</li> <li>• Level 4</li> <li>• Level 5</li> <li>• Level 6</li> <li>• Level 7</li> <li>• Level 8</li> <li>• Non-compliant</li> </ul>	<ul style="list-style-type: none"> <li>• 8 Points</li> <li>• 7 Points</li> <li>• 6 Points</li> <li>• 5 Points</li> <li>• 4 Points</li> <li>• 3 Points</li> <li>• 2 Points</li> <li>• 1 Point</li> <li>• 0 Points</li> </ul>	
EME and/ or QSE	2 Points	
At least 51% of Women-owned companies	2 Points	
At least 51% owned companies by People with disability	2 Points	
At least 51% owned companies by Youth	2 Point	
Local Economic Participation <ul style="list-style-type: none"> <li>• City of Tshwane</li> <li>• Gauteng</li> <li>• National</li> </ul>	4 Points 2 Points 1 Point	

**N.B** For points to be allocated as per above the tenderers will be required to submit proof of documentation as evidence for claims made. Any tenderer that does not submit evidence as stated in the bid document to claim applicable points will be allocated zero points.

**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.

.....	
<b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....

**CONTRACT FORM: RENDERING OF SERVICE**

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution) ..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **RTD 01-2024/25** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
  
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, *viz*
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2022;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  
  - (ii) General Conditions of Contract; and
  
  - (iii) Other (specify)
  
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
  
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
  
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

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

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

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

**CONTRACT FORM: RENDERING OF SERVICE**

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

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

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

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

DATE: .....

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

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

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

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

**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: **RTD 01-2024/25**

**TENDER FOR THE APPOINTMENT OF PROFESSIONAL TECHNICAL ADVISORS TO THE MINIBUS TAXI INDUSTRY ON THE CITY OF TSHWANE INTEGRATED RAPID PUBLIC TRANSPORT NETWORK (IRPTN) PROJECT FOR A PERIOD OF THIRTY-SIX (36) MONTHS (Bid Number and Description)**

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

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

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

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

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

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

.....  
Signature Date

.....  
Position Name of Bidder

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

# GENERAL CONDITIONS OF CONTRACT

July 2010

### NOTES

The purpose of this document is to:

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

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

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

## TABLE OF CLAUSES

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

## General Conditions of Contract

### 1. Definitions

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

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

**1. Application**

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

**3. General**

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

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

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

**9. Packing**

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

**10. Delivery and documents**

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

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

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

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

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

**22. Penalties**

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

**23. Termination for default**

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

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

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

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

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

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

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

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

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

**25. Force Majeure**

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

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

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

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

**SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**Duly represented by the Group Head: Roads & Transport: Pheko Letlonkane**

**AND**

---

**Registration Number:** \_\_\_\_\_

**Duly represented by** \_\_\_\_\_

## SERVICE LEVEL AGREEMENT

entered into between

### THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by Pheko Letlonkane in his capacity as Group Head: Roads & Transport duly authorised thereto under and by virtue of the City of Tshwane Metropolitan Municipality's Corporate System of Delegations, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement.

(Herein referred to as the "CITY")

**AND**

\_\_\_\_\_

**Registration Number:** \_\_\_\_\_

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

(Herein referred to as the "**SERVICE PROVIDER**")

## CONTENT

1	DEFINITIONS .....	6
2	INTERPRETATION .....	7
3	APPOINTMENT .....	8
4	PURPOSE OF THE AGREEMENT .....	9
5	RELATIONSHIP .....	9
6	DURATION .....	9
7	CONTACT PERSON .....	10
8	SCOPE OF GENERAL SERVICES .....	10
9	PRICE AND PAYMENT .....	12
10	PRICE RESTRUCTURING .....	14
11	SERVICE LEVELS .....	15
12	WITHHOLDING OF PERFORMANCE .....	16
13	PENALTY .....	16
14	ACCESS .....	17
15	AMENDMENT OR CANCELLATION OF PURCHASE ORDER .....	17
16	AUDIT .....	17
17	TRAINING .....	19
18	SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES .....	19

<b>19</b>	<b>NEWORDER INDUSTRIES’S PERSONNEL .....</b>	<b>22</b>
<b>20</b>	<b>STATUTORY AND EMPLOYMENT ISSUES.....</b>	<b>22</b>
<b>21</b>	<b>SUB-CONTRACTING .....</b>	<b>24</b>
<b>22</b>	<b>CONFIDENTIALITY .....</b>	<b>25</b>
<b>23</b>	<b>INTELLECTUAL PROPERTY RIGHTS.....</b>	<b>25</b>
<b>24</b>	<b>FORCE MAJEURE.....</b>	<b>27</b>
<b>25</b>	<b>CESSION .....</b>	<b>28</b>
<b>26</b>	<b>CHANGE OF CONTROL / CIRCUMSTANCE.....</b>	<b>28</b>
<b>27</b>	<b>BREACH.....</b>	<b>28</b>
<b>28</b>	<b>EARLY TERMINATION.....</b>	<b>29</b>
<b>29</b>	<b>DISPUTES .....</b>	<b>29</b>
<b>30</b>	<b>LAWS AND JURISDICTION.....</b>	<b>32</b>
<b>31</b>	<b>NOTICES AND COMMUNICATIONS.....</b>	<b>32</b>
<b>32</b>	<b>GENERAL AND MISCELLANEOUS.....</b>	<b>34</b>
<b>33</b>	<b>EXECUTION .....</b>	<b>35</b>
	<b>ANNEXURE “A”.....</b>	<b>37</b>
	<b>ANNEXURE “B”.....</b>	<b>38</b>

**RECORDAL:**

**WHEREAS** the City requires taxi industry transition technical advisory services for the benefit of the minibus taxi industry affected operators related to be provided by the Service Provider for and on behalf of the minibus taxi industry affected operators;

**AND WHEREAS** the City wishes to appoint \_\_\_\_\_ as a taxi industry technical advisor;

**AND WHEREAS** the Service Provider wishes to provide such Services;

**AND WHEREAS** the Service Provider has indicated that it has the necessary expertise, skills and capabilities to provide the Services;

**NOW THEREFORE** the Parties have agreed to enter into this Agreement, in terms of which \_\_\_\_\_ shall render and provide Services to the minibus taxi industry affected operators through the City in accordance with the terms and subject to the conditions of this Agreement:

## 1 DEFINITIONS

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

- 1.1 **“Agreement”** means this service level agreement and shall include any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;
- 1.2 **“Business Day”** means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;
- 1.3 **“Business Week”** means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;
- 1.4 **“City”** means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;
- 1.5 **“Contact Persons”** means persons identified by the Parties as persons who are responsible for the execution of this Agreement and whose designations are set out in clause 31 and who may delegate their functions and role in writing from time to time;
- 1.6 **“Contract Price”** shall mean the amount reflected as the contract price in clause 9 below;
- 1.7 **“Contract Period”** means the contract period the period reckoned from the Effective Date to \_\_\_\_\_, which period may be extended as stipulated in Annexure A and in clause 6 for this Agreement;
- 1.8 **“Effective Date”** means \_\_\_\_\_ notwithstanding the Signature Date;
- 1.9 **“Intellectual Property”** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party

to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and improvements to the Intellectual Property, otherwise pursuant to this Agreement;

- 1.10 **"Month"** means a calendar month;
- 1.11 **"Service Provider"** means \_\_\_\_\_, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number \_\_\_\_\_;
- 1.12 **"Parties"** means City and the Service Provider and "Party" means either of them as the context requires;
- 1.13 **"Services"** means services to be provided by the Service Provider to the City as detailed in 8below;
- 1.14 **"Signature Date"** means the date of signature of this Agreement by the Party signing last;
- 1.15 **"Subcontract"** means any contract or agreement or proposed contract between the Service Provider and any third-party whereby that third-party agrees to provide to the Service Provider the Services or any part thereof;
- 1.16 **"Subcontractor"** means the third-party with whom the Service Provider enters into a Subcontract;
- 1.17 **"Tax Invoice"** means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and
- 1.18 **"VAT"** means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

## **2 INTERPRETATION**

- 2.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

- 2.2 Unless the context clearly indicates a contrary intention, any word connoting:
- 2.2.1 any singular shall be deemed to include a reference to the plural and vice versa;
  - 2.2.2 any one gender shall be deemed to include a reference to the other two genders; and
  - 2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.
- 2.3 The expiry or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that Agreement shall not apply.
- 2.5 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.6 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.
- 2.7 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any party, then notwithstanding that, it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.

### **3 APPOINTMENT**

The City hereby appoints the Service Provider, who accepts such appointment, to render and provide the Services in accordance with the terms and subject to the conditions of this Agreement.

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

4.1 The Purpose of this Agreement is to:

4.1.1 formalise and regulate the working relationship between the Parties;

4.1.2 set out the roles and responsibilities of the Parties; and

4.1.3 define process and procedures to be followed by the Parties.

#### **5 RELATIONSHIP**

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

#### **6 DURATION**

6.1 This Agreement shall commence on the Effective Date and shall subsist for 36 (thirty-six) months, unless terminated earlier pursuant to clause 28 below.

6.2 This Agreement shall further be subject to review by the City and, at the City's sole discretion, and may be extended or for a further period ("Renewal Period"), and in line with the provisions of Municipal Finance Management Act Circular 62, on condition that the Service Provider has not breached any of the provisions of this Agreement during the initial Contract Period, and the City has not issued a written notice to the Service Provider of its intention to terminate this Agreement, which notice may not be issued later than the last day of \_\_\_\_\_.

6.3 The Parties shall negotiate the terms and conditions of this Agreement for the Renewal Period.

## **7 CONTACT PERSON**

- 7.1 The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person.
- 7.2 The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.
- 7.3 The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.
- 7.4 Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.
- 7.5 Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

## **8 SCOPE OF GENERAL SERVICES**

- 8.1 The Service Provider shall, for the duration of this Agreement, provide the Services set out in the scope of professional services attached hereto and marked **Annexure B**, and those set out below, including but not limited to:
  - 8.1.1 Share critical and relevant information about the IPTN to empower the minibus taxi affected operators to make meaningful decisions;
  - 8.1.2 Ensure that there is no competition with A Re Yeng Services once the minibus taxi affected operators have been compensated and removed from operating a corridor served by A Re Yeng;
  - 8.1.3 An efficient, reliable and affordable public transport service for the residents and visitors of the City;

- 8.1.4 Dedicated public transport services that will be provided by a contracted Bus Operating Company entirely owned by the affected public transport operators (minibus taxi affected operators and affected bus operators), the majority of which will be from the minibus taxi industry;
- 8.1.5 An appropriate compensation model for existing minibus taxi affected operators displaced from routes along which the IPTN will operate;
- 8.1.6 A negotiated Bus Operating Contract that will be entered into by and between the City and the established Bus Operating Company;
- 8.1.7 After consultation with the Bus Operating Company's transaction advisors and the Bus Operating Company's Directors, appraise the minibus taxi affected operators on the Bus Operating Company's fleet requirements for purposes of the Bus Operating Company providing services in line with the City's IPTN;
- 8.1.8 Cooperation in the design and construction of universally accessible stations and stops along the A Re Yeng route alignment;
- 8.1.9 Possible job retention, job creation, reskilling and skills development for individuals currently employed by the minibus taxi industry affected operators;
- 8.1.10 Identification of public passenger transport operators that will be affected by the subsequent phase(s) of the A Re Yeng system through a market research study to be commissioned by the City;
- 8.1.11 Verification of compliance of the mini bus taxi affected operators as part of confirmation of their affectedness;
- 8.1.12 Determination of the process for vehicle removal and/or disposal as part of the integration of services in line with the City's IPTN;

- 8.1.13 Provide a framework for compensation of minibus taxi affected operators that will be affected by and a process for the surrender, removal and/or disposal of their minibus taxi vehicles;
- 8.1.14 In concurrence with the Bus Operating Company's transaction advisors and in consultation with the minibus taxi affected operators, conduct research and provide options for the structure and financing as part of capitalisation of the Bus Operating Company;
- 8.1.15 In concurrence with the Bus Operating Company's transaction advisors and in consultation with the minibus taxi affected operators, develop criteria for allocation of shareholding by the minibus taxi affected public passenger transport operators; and
- 8.1.16 In concurrence with the Bus Operating Company's transaction advisors and in consultation with affected operators, prepare guidelines for shareholder on-boarding of minibus taxi affected public passenger transport into the Bus Operating Company.
- 8.1.17

## **9 PRICE AND PAYMENT**

- 9.1 The City will during the Contract Period pay to the Service Provider a Contract Price in the sum of \_\_\_\_\_ the Goods in terms of this Agreement.
- 9.2 All payments under this Agreement shall be made by electronic funds transfer or other forms of payment as the Parties may agree from time to time, upon receipt of valid and undisputed Tax Invoices and month-end statements together with the supporting documentation from the Service Provider, once the undisputed Tax Invoices or such portion of the Tax Invoices which are undisputed become due and payable.

- 9.3 All amounts and other sums payable in terms of this Agreement and schedules hereto will be stipulated as being inclusive of VAT, unless expressly stated otherwise.
- 9.4 Unless otherwise provided in the schedules, valid Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by the City within 30 (thirty) days after the date of receipt by the City of the Operator's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation, but in any event not later than 90 (ninety) days of receipt of such statement.
- 9.5 Where the payment of any valid and undisputed Tax Invoice, or any part of the said Tax Invoice which is not in dispute, is not made by the due date, the Service Provider shall not be entitled to charge interest on the outstanding amount.
- 9.6 Should the Service Provider, for whatever reason, owe any amount to the City, the City may set it off against any moneys that may be owing to the Service Provider by the City, unless the Service Provider has recorded a dispute in line with the Municipal Systems Act as well as the applicable credit control policy with the City, regarding the amount or whether it is due in which event, the City can only deduct that part of the amount not in dispute.
- 9.7 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties.
- 9.8 The City shall pay the amount reflected on a Tax Invoice once the City's Contact Person has verified that the Services set out in a schedule have been rendered and the Tax Invoice amount has been approved by the City.
- 9.9 All Tax Invoices shall be addressed to the City's Contact Person.
- 9.10 All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

Account Name:

Bank:

Account Type:

Account No:

Branch:

Branch Code:

- 9.11 Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the Service Provider to the City. The City shall not be liable for any costs or damages suffered by the Service Provider as a result of such late payment.
- 9.12 If applicable and subject to this clause 9 and upon approval by the City's Contact Person, the City shall pay the Service Provider for the Services monthly in arrears.

## **10 PRICE RESTRUCTURING**

- 10.1 The Service Provider shall be subject to a price review every year.
- 10.2 The City shall embark on a benchmarking exercise every 12 (twelve) months where the City shall benchmark the Service Provider's Contract Price against the prevailing market rates.
- 10.3 In the event it emerges that the Service Provider's charges in respect of the Contract Price and other charges under this Agreement are materially higher than the reasonable benchmark ascertained by the City or that the City can acquire similar Services of a like quality from another Service Provider or another supplier at a total delivered cost that is lower than the total delivered cost of the Services acquired hereunder from the Operator, the City shall have the right to notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Contract Price and any other charges hereunder, on such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.
- 10.4 If the Service Provider fails to do so or cannot legally do so, the City may:

- 10.4.1 acquire the Services from such other Service Provider in which case the obligations, including, but not limited to, any costs and/or commitments, if any, of the City and the Service Provider hereunder shall be reduced accordingly;
  - 10.4.2 terminate this Agreement and impose penalties, liability or further obligation; or
  - 10.4.3 continue under this Agreement.
- 10.5 Within 30 (thirty) calendar days of a notice by the City or at any time the City so requests, the Service Provider shall certify in writing to the City that it is in compliance with this clause and shall provide all information that the City reasonably requests in order to verify such compliance.

## **11 SERVICE LEVELS**

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

11.3 Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 8 above.

## **12 WITHHOLDING OF PERFORMANCE**

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services from the City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 28 below.

## **13 PENALTY**

13.1 Should the Service Provider fail to comply with its obligations in terms of this Agreement, the City may:

13.1.1 exercise its rights in terms of clause 28 below; alternatively

13.1.2 impose a penalty on the Service Provider.

13.2 An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.

13.3 Should the City elect to impose a penalty on the Service Provider, the City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.

13.4 Should the Service Provider fail to remedy the default within 7 (seven) days after receiving the notice, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose a penalty, which penalty shall be a deduction of 10% (ten *percentum*) of the monthly Contract Price for the Contract Period; and for the avoidance of doubt, the penalty amount shall be 10% (ten *percentum*) of the monies due for payment to the Service Provider monthly in terms of clause 9 above.

13.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 28 below.

## **14 ACCESS**

- 14.1 The City shall allow the Service Provider reasonable access to its premises, provided that:
- 14.1.1 access is related to the Services to be provided by the Service Provider; and
  - 14.1.2 the Service Provider adheres to all rules, regulations and instructions applicable at the City's premises.
- 14.2 The Service Provider is required to notify the City monthly of employees who are to provide Services.
- 14.3 The City shall grant the Service Provider and/or its employees, referred in clause 14.2 above, access to its premises to perform its obligations in terms of this Agreement.
- 14.4 The Service Provider and its employees shall at all time when entering the premises and/or service areas of the City comply with all rules, laws, regulations and policies of the City.

## **15 AMENDMENT OR CANCELLATION OF PURCHASE ORDER**

The City is entitled to cancel an order, reschedule provision of the Services or change the deadlines on fourteen (14) days written notice to the Service Provider.

## **16 AUDIT**

- 16.1 The City may at any time audit the service levels of the Service Provider in terms of this Agreement.
- 16.2 If the City is, at any time, dissatisfied with the service levels then the Service Provider shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.
- 16.3 The Service Provider shall immediately upon receipt of written demand by the City, remedy such failure or default, within 7 (seven) Business Days from the date of receipt of the notice, free of charge.

- 16.4 Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to impose penalties as provided for in clause 13 above or invoke the provisions of clauses and/or clause 28 below.
- 16.5 To enable the City to determine whether the Services rendered in terms of this Agreement are being complied with, the Service Provider shall:
- 16.5.1.1 provide the City with such information as it may reasonably require;
  - 16.5.1.2 allow the City to inspect and take copies of any records of the Service Provider relating to the Services, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;
  - 16.5.1.3 allow the City or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given to the Service Provider.

**16.6 Service Provider to Provide Reasonable Assistance**

- 16.6.1 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the Service Provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.
- 16.6.2 Any information required to be provided to the City pursuant to this clause 19 below shall be provided by the Service Provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.
- 16.6.3 The cost of any audit contemplated in terms of this clause 19 below shall be for the account of the City unless any material

irregularity or failure on the part of the Service Provider is determined by the City in the course of such audit.

16.7 The audit contemplated in this Agreement will be conducted:

16.7.1 during normal business hours;

16.7.2 save where the circumstances justify it, on reasonable notice to the Service Provider; with the minimum interference in the provision of the Goods and/or Services and the Service Provider's other operations.

## **17 TRAINING**

If required, the Service Provider shall as part of rendering the Services, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate to the Services.

## **18 SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES**

### **18.1 Service Warranties**

18.1.1 The Service Provider warrants that in relation to each Service provided in terms of this Agreement:

18.1.1.1 it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Operator;

18.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;

18.1.1.3 it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

- 18.1.1.4 all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;
- 18.1.1.5 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its personnel and for withholding and remitting income tax for its personnel in conformance with any applicable laws and regulations;
- 18.1.1.6 the use or possession by the City of any materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third-party;
- 18.1.1.7 with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services and/or similar to the Services;
- 18.1.1.8 which Services will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to outputs and deliverables;
- 18.1.1.9 using and adopting any standards, processes and procedures required under this Agreement;
- 18.1.1.10 warranting that it shall employ suitably qualified and trained employees to provide the Services to the City and it shall allocate employees in accordance with the technical skill and knowledge required;
- 18.1.1.11 free from any defects in advises and Services;

- 18.1.1.12 maintaining and causing to be maintained the highest standard of professionalism and care in rendering the Services;
- 18.1.1.13 maintaining and caused to be maintained the highest standard of care and diligence in providing the Services;
- 18.1.1.14 it shall not utilise or instruct the legal advisors or legal practitioners appointed as resources for rendering Services under this Agreement to represent the Service Provider in cases of any dispute resolution processes which might arise between the City and the Service Provider;
- 18.1.1.15 ensuring that all applicable laws are observed;  
and
- 18.1.1.16 without derogating from the generality of the foregoing, strictly adhering to any or all laws, regulations and accepted procedures with regard to health and hygiene.

## 18.2 Indemnity

- 18.2.1 The Service Provider hereby indemnifies the City against any claim which may be brought against the City by the Service Provider's personnel or a third-party arising from the execution of this Agreement alternatively which arises against the City as a result of the Service Provider's breach of any of the provisions of this Agreement, provided that the City shall notify the Service Provider in writing within a reasonable time, and in any event not less than 14 (fourteen) Business Days of the City becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such assistance. The Service Provider may, within 5 (five) Business

Days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

## **19 NEWORDER INDUSTRIES'S PERSONNEL**

### **19.1 Liability for Criminal Acts of Employees**

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

### **19.2 Character of Employees**

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

19.2.2 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services in terms of this Agreement.

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

## **20 STATUTORY AND EMPLOYMENT ISSUES**

### **20.1 The Service Provider shall comply with all employment legislation**

20.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

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

## 20.2 **No employment**

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

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

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City.

## 21 SUB-CONTRACTING

- 21.1 The Service Provider shall not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third-party without the prior approval of the City.
- 21.2 In the event the Service Provider wishes to Subcontract any portion of the Services in terms of this Agreement, it shall apply to the City in writing for approval to do so.
- 21.3 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.
- 21.4 The City may, in its sole and absolute discretion refuse approval to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:
- 21.4.1 the Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Services;
- 21.4.2 such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;
- 21.4.3 the Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and
- 21.4.4 no such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

## 22 CONFIDENTIALITY

- 22.1 The Service Provider acknowledges that all information relating to the City confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business; ("**Confidential Information**"), shall remain confidential and shall not be made known unless the City has given written consent to do so.
- 22.2 The information provided by the City in the context of this Agreement is Confidential Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.
- 22.3 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:
- 22.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or
- 22.3.2 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or
- 22.3.3 The information was received from a third-party not in breach of an obligation of confidentiality.

## 23 INTELLECTUAL PROPERTY RIGHTS

- 23.1 All Intellectual Property Rights of the Service Provider and/or third-party vest in the Service Provider and/or third-party, as appropriate.

- 23.2 All Intellectual Property Rights of the City, including but not limited to the City's name(s) and logo remain the absolute property of the City.
- 23.3 The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Patent, Design, Copyright, Trade Mark or trade secret or other proprietary right of the City or of any third-party.
- 23.4 The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.
- 23.5 In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third-party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.
- 23.6 Should any claim be made against the City by any third-party in terms of clause 23.1 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.
- 23.7 Should any third-party succeed in its claim for the infringement of any third-party proprietary rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:
- 23.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
- 23.7.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service

which does not infringe and which is materially similar to the subject of infringement; or

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

23.7.4 withdraw the subject of infringement.

## **24 FORCE MAJEURE**

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

24.2 If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement shall be suspended for the period agreed in writing between the Parties.

24.3 In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure ("the Affected Party") then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period ("Agreed Period").

24.4 In the event that both Parties reasonably believe that the affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement without further notice to the other Party.

24.5 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with a written notice of the interrupting circumstances as

provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

## **25 CESSION**

The Service Provider shall not be entitled to cede or assign or transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written approval of the City.

## **26 CHANGE OF CONTROL / CIRCUMSTANCE**

26.1 The Service Provider shall notify the City, in writing, of any change in the Service Provider's shareholding or membership or any change in the Service Provider's subsidiary companies or holding or its affiliates (such change shall be considered a material change in the constitution and identity of the Service Provider. The City may terminate this Agreement upon becoming aware of such material change.

26.2 The Parties agree that should there be a change as envisaged in clause 26.1 above, the Service Provider will no longer exist and a new third-party/entity shall have been constituted. In this regard, such third-party shall not be entitled to inherit any of the Service Provider's rights and obligations in terms of this Agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.

26.3 The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the Service Provider to provide Services. In the event that any material changes or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

## **27 BREACH**

27.1 Subject to clause 26.3 above, should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected Party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 5 (five) Business Days and

should the Defaulting Party fail to remedy the breach within 5 (five) Business Days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law to:

27.1.1 immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or

27.1.2 request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or

27.1.3 impose penalties as provided for in clause 13 above.

## **28 EARLY TERMINATION**

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

## **29 DISPUTES**

29.1 Save for clause 26 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

29.1.1 the interpretation of this Agreement;

29.1.2 the performance of any of the terms of this Agreement;

29.1.3 any of the Parties' rights and obligations;

29.1.4 any procedure to be followed;

29.1.5 the termination or cancellation or breach of this Agreement; or

29.1.6 the rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

- 29.2 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause<sup>28</sup> above shall apply.
- 29.3 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa ("the Arbitration Act").
- 29.4 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:
- 29.4.1 at any place which the Parties agree, in writing, to be mutually convenient.
- 29.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.
- 29.5 If the arbitration is:
- 29.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;
- 29.5.2 an accounting matter, then the arbitrator shall be a practicing-chartered accountant of not less than 10 (ten) years' standing;
- 29.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.
- 29.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be

nominated at the request of either of the Parties, by the president for the time being of the Gauteng Legal Practice Council.

29.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

29.8 The arbitrator may:

29.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;

29.8.2 interview and question under oath the parties of any of their representatives;

29.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and

29.8.4 make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.

29.9 The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.

29.10 The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

29.11 Notwithstanding the provisions of clauses 29.1, 29.2, 29.3, 29.4, 29.5, 29.6, 29.7 and 29.8 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action

therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

29.12 The provisions of this clause 28 above are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

### **30 LAWS AND JURISDICTION**

30.1 This Agreement shall be governed by and interpreted according to the Laws of the Republic.

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

### **31 NOTICES AND COMMUNICATIONS**

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

#### **31.1.1 THE CITY:**

Roads & Transport Department  
IRPTN Division  
2<sup>nd</sup> Floor, Sammy Marks Building,  
1090 Arcadia Street,  
Pretoria

Attention: Divisional Head: IRPTN

Telephone:

Fax:

Email: [Immym@tshwane.gov.za](mailto:Immym@tshwane.gov.za)

**31.1.2 THE SERVICE PROVIDER:**

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Attention:

Telephone:

Fax:

Email:

31.2 Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a *Poste Restante*.

31.3 Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:

31.3.1 is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

31.3.2 is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7<sup>th</sup> (seventh) day after the date of posting.

31.3.3 is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon

on the following business day (excluding Saturdays) where it is transmitted outside such business hours.

31.4 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile.

31.5 Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

## **32 GENERAL AND MISCELLANEOUS**

### **32.1 SOLE RECORD OF AGREEMENT**

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

### **32.2 NO AMENDMENT EXCEPT IN WRITING**

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

### **32.3 WAIVERS**

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

### **32.4 SURVIVAL OF OBLIGATIONS**

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

### **32.5 APPROVALS AND CONSENTS**

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

## **33 EXECUTION**

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

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

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
2024

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For and on behalf of **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**  
**(duly represented by Pheko Letlonkane)**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
2024

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For and on behalf of \_\_\_\_\_  
**(duly represented by \_\_\_\_\_)**

**ANNEXURE "A"**

**RESOLUTION OF THE BOARD**

Resolution by the Board of Directors of \_\_\_\_\_  
made at a meeting held at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_\_.

**NOTED: THAT** \_\_\_\_\_  
intends to enter into an Agreement with the City of Tshwane  
Metropolitan Municipality in terms of  
which \_\_\_\_\_ shall provide  
Taxi Industry Technical Advisory services as detailed in the Agreement  
and in Annexure B on the terms and subject to the conditions of the  
Agreement to which this resolution is attached as Annexure "A".

**RESOLVED:**

**THAT** \_\_\_\_\_ approves and  
enters into the Agreement on the terms and subject to the conditions of  
the Agreement to which this resolution is attached.

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

\_\_\_\_\_

**Read and Confirmed**

**Chairman/Company Secretary**

## **ANNEXURE "B"**