



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

EED 16-2022/23

<b>TENDER DESCRIPTION:</b>	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED
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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

**BID CLOSING DATE**

**21 FEBRUARY 2023**

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: ENERGY AND ELECTRICITY

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
EED 16-2022/23	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED	Energy and Electricity	Edward Oseile	<b>Date:</b> 10 February 2023 <b>Venue:</b> City of Tshwane Electricity Control Centre, Corner Behrens and Flowers street, Capital park, Pretoria. <b>Time:</b> 10:00	21 February 2023 at 10:00

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

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

**“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 21 February 2023**

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

- Technical enquiries: Edward Oseile (012 358 3747 or [edwardo@tshwane.gov.za](mailto:edwardo@tshwane.gov.za))
- Supply chain enquiries: Mulondi Rasekgala (012 358 6636 or [mulondin@tshwane.gov.za](mailto:mulondin@tshwane.gov.za))

**The validity period for the tender after closure is 90 days.** City of Tshwane 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.

**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.**

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## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

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

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

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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:

Full name of partner	Residential address	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....

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: .....



## **SPECIFICATION OR TERMS OF REFERENCE**

### **ENERGY AND ELECTRICITY DEPARTMENT**

#### **BID NAME**

Tender for Support, Service and Maintenance of Supervisory Control and Data Acquisition System (SCADA) for the Period of Three years, as and when Required

#### **BID NUMBER**

**EED 16-2022/23**

### **1. INTRODUCTION AND PURPOSE**

The City of Tshwane (COT) operates a Sinaut Spectrum 3, Supervisory Control and Data Acquisition System (SCADA) at the Control Centre at Capital Park in Tshwane, South Africa. Interested parties are invited to participate in a tender process of purposes of providing services to City of Tshwane intended for the SCADA Master Service Level Agreement Contract.

### **2. BACKGROUND**

The City of Tshwane operates a Sinuat Spectrum 3 SCADA application which is used for monitoring, alarming, measuring, calculating, archiving and supervision of its electricity distribution network. The complete SCADA Human Machine Interface system is operated from Electricity Network Control Centre at Capital Park, Pretoria.

The System Operators make use of the system to perform supervisory control actions via substation network diagrams, tabular displays, or switching procedure management. The supervisory control is applied to single switching devices (on/off, open/close), tap changers (one step up/down).

The System consist of an alarm display which summarises the message text, the online network diagrams and the substations tabular summary showing the field device flashing symbols. Direct links between a message entry and the associated field devices enable the system operators to change between summaries and one-line displays. SCADA alarms also produce an audible alarm, with ability to inhibit or delay. Different tones are configured to represent different degrees of urgency.

Serial DNP3 protocol is used to communicate from the master station to the RTU's in the field. Other protocols used are IEC 101, IEC 104 and DNP over IP.

### 3. SCOPE OF WORK SPECIFICATION

The SCADA Master Service Level Agreement Contract should make provision for hardware and software maintenance. Hardware specified as in section 3.1. to 3.18 and Software specified as in section 3.19. The tenderer should also supply a price and hours on the following items:

- Software applications
- System administration
- Database maintenance
- Display maintenance
- Software fault analysis
- Use of system documentation
- Installation of software patches
- Spare parts
- Routine hardware maintenance
- Priority on-call on-site diagnosis and system restoration
- Hardware vendor-proprietary fault diagnosis
- Hardware parts repair or replacement of faulty parts.

COT will assign a priority from 1 through 5 for each Service Request they submit. The priority depends on the type of the request and the impact on their system or company. Priority definitions appear in the following table, organized according to the three types of requests/Job cards: Problem Reports, Work Requests or Questions / Consulting.

Priority	Problem Reports	Work Requests	Questions / Consulting
1 Critical	Emergency condition. System or critical subsystem down.	-	-

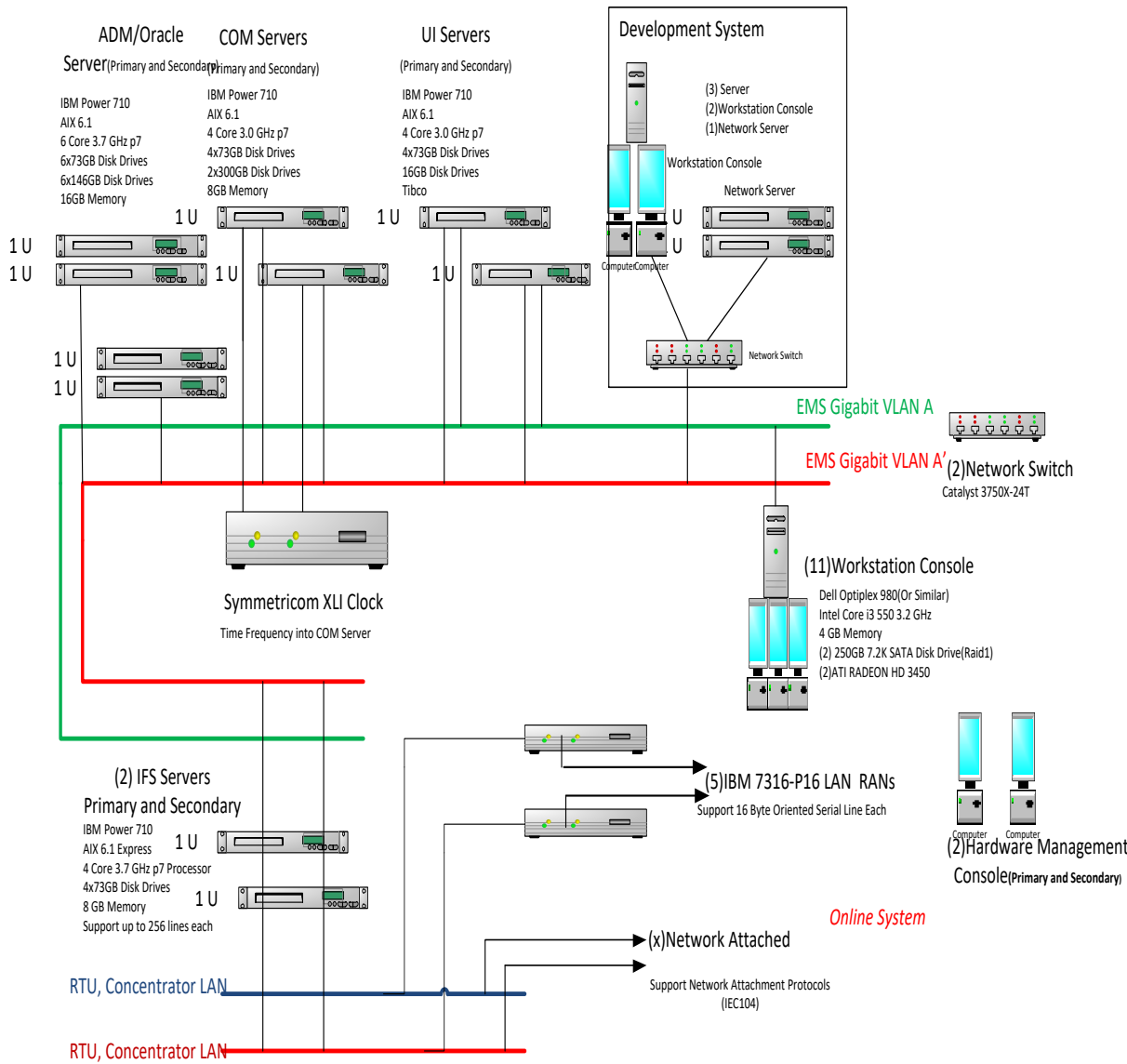
2 Urgent	System performance substantially degraded or restricted.	Planned work	-
3 Serious	System performance degraded. Fix or workaround available.	Planned work	Planned
4 Minor	Minor imperfection, discrepancy, or peculiarity.	Planned work	Planned
5 Info	Documentation or cosmetic issues. Enhancement requests and ideas.	-	Planned

Response time is defined as the time to acknowledge receipt of and start work on a Service Request. Resolve time is a separate and unspecified measurement that is subject to wide variation depending on the nature of the Service Request. Response times are:

- 1 Critical - 4 hours
- 2 Urgent - 24 hours
- 3 Serious - 1 week
- 4 Minor - 1 month

### 3.1 CURRENT SYSTEM CONFIGURATION

### 3.2 ONLINE SYSTEM



### 3.3 LIST OF EQUIPMENT TYPES

Item-No	Function	Qty	Manufacturer	Model
1.	Spectrum Servers	3	IBM	Power 710 - 8231 E2B
2.	Hardware Management Console	1	IBM	7042-CR6 (Rack-Mounted)
3.	Server Rack	1	IBM	7014-T42
4.	Network Security (Firewall)	1	Cisco	ASA 5520
5.	LAN Switches	1	Cisco	Catalyst 3750X-24T
6.	RAN, HMC Switches	2	Cisco	Catalyst 2960-24TC
7.	HMI Multi-Display Workstation	2	Dell	OptiPlex XE
8.	LCD Displays	4	Dell	Ultra-Sharp U2410 24" Widescreen
9.	Magnetic Tape Drive	1	IBM	TS2250 Tape Drive Express
10.	Hardware Management Console	2	IBM	7042-CR6 (Rack-Mounted)
11.	Server Rack	2	IBM	7014-T42
12.	Network Security (Firewall)	2	Cisco	ASA 5520
13.	LAN Switches	8	Cisco	Catalyst 3750X-24T
14.	RAN, HMC Switches	4	Cisco	Catalyst 2960-24TC
15.	Remote Asynchronous Nodes	5	IBM	7036 P16
16.	HMI Multi-Display Workstation	11	Dell	OptiPlex XE
17.	LCD Displays	24	Dell	Ultra-Sharp U2410 24" Widescreen
18.	GPS Clocking Device	1	HOPF	7001RC-GPS
19.	Magnetic Tape Drive	7	IBM	TS2250 Tape Drive Express

### 3.4 CONFIGURATION OF ADMINISTRATION SERVERS

Technical Schedule	Unit	Details
Operating System		AIX 6.1
Hardware		
Manufacturer		IBM
Type		8231 Model E2B
CPU		6-core 3.7GHz POWER7
Working memory	2	8GB, 1066MHz, 1GB
Hard disk	6	73GB 15K RPM SAS
	6	146GB 15K RPM SAS
Extension	1	EXP 12S Extension Drawer
	1	SAS Cable (X) Adapter, Dual Controller
	1	SAS Cable (YO) Adapter, Single Controller
	1	PCIe LP 2-x4-port SAS Adapter 3GP
LAN Interface	1	Quad-Port 1GB HEA Daughter Card
Media	1	DASD/Media Backplane 6 SFF DASD/SATA DVD
	1	SATA Slim line DVD Drive
Power Supply	2	System AC Power Supply 1725W

### 3.5 CONFIGURATION OF UI SERVERS

Technical Schedule	Unit	Details
Operating System		AIX 6.1
Hardware		
Manufacturer		IBM
Type		8231 Model E2B
CPU		4-core 3.0GHz POWER7
Working memory	2	8GB, 1066MHz, 1GB
Hard disk	4	73GB 15K RPM SAS
LAN Interface	1	Quad-Port 1GB HEA Daughter Card
Media	1	DASD/Media Backplane 6 SFF DASD/SATA DVD
	1	SATA Slim line DVD Drive
Power Supply	2	System AC Power Supply 1725W
	1	Power Cord (9-foot), Drawer to IBM PDU, 250V/10A
	1	Power Cord (5-foot), Drawer to IBM PDU, 250V/10A

### 3.6 DEVELOPMENT SERVER CONFIGURATION

Technical Schedule	Unit	Details
Operating System		AIX 6.1
Hardware		
Manufacturer		IBM
Type		8231 Model E2B
CPU		4-core 3.0GHz POWER7
Working memory	1	8GB, 1066MHz, 1GB
Hard disk	4	73GB 15K RPM SAS
	2	300GB 10K RPM SAS
LAN Interface	1	Quad-Port 1GB HEA Daughter Card
Media	1	DASD/Media Backplane 6 SFF DASD/SATA DVD
	1	SATA Slim line DVD Drive
Power Supply	1	System AC Power Supply 1725W

### 3.7 IFS SERVER CONFIGURATION

Technical Schedule	Unit	Details
Operating System		AIX 6.1
Hardware		
Manufacturer		IBM
Type		8231 Model E2B
CPU		4-core 3.0GHz POWER7
Working memory	1	8GB, 1066MHz, 1GB
Hard disk	4	73GB 15K RPM SAS
LAN Interface	1	Quad-Port 1GB HEA Daughter Card
Media	1	DASD/Media Backplane 6 SFF DASD/SATA DVD
	1	SATA Slim line DVD Drive
Power Supply	2	System AC Power Supply 1725W

### 3.8 COMMUNICATION SERVER CONFIGURATION

Technical Schedule	Unit	Details
Operating System		AIX 6.1
Hardware		
Manufacturer		IBM
Type		8231 Model E2B
CPU		4-core 3.0GHz POWER7
Working memory	1	8GB, 1066MHz, 1GB
Hard disk	4	73GB 15K RPM SAS
	2	300GB 10K RPM SAS
LAN Interface	1	Quad-Port 1GB HEA Daughter Card
PCIe Interfaces	1	PCIe LP 4+Port Async EIA-232 Adapter
Media	1	DASD/Media Backplane 6 SFF DASD/SATA DVD
	1	SATA Slim line DVD Drive
Power Supply	2	System AC Power Supply 1725W

### 3.9 HARDWARE MANAGEMENT CONSOLE

Technical Schedule	Unit	Details
Management Console		
Hardware		
Manufacturer		IBM
Type		7042-CR6
Dimensions		1U
Panel Console Kit	1	IBM 7316-TF3 (17")
Keyboard	1	
Modem (incl. Cable)	1	Internal
Ethernet Cable	1	15m (Console to System Unit)
Power Supply	1	HMC CR5/6 Red. Power Supply 675W

### 3.10 FIREWALL EQUIPMENT

Technical Schedule	Unit	Details
Hardware		
Manufacturer		Cisco
Type		ASA 5520
Memory		2GB
3DES/AES Throughput		up to 225 MB/s
Ports	4	Gigabit Ethernet
	1	Fast Ethernet
	2	Serial RJ45 (console and auxiliary)
	2	USB 2.0



### 3.11 NETWORK SWITCHES

Technical Schedule	Unit	Details
Hardware		
Manufacturer		Cisco
Type		Catalyst 3750-24T-S
Memory		128 MB DRAM
		16 MB Flash Memory
Ports	24	RJ-45 Ethernet 10/100/1000 ports
	4	SFP based Gigabit ports

### 3.12 PERIPHERAL SWITCHES

Technical Schedule	Unit	Details
Hardware		
Manufacturer		Cisco
Type		Catalyst 2960-24TC
Memory		64 MB DRAM
		32 MB Flash Memory
Ports	20	RJ-45 Ethernet 10/100/1000 ports
	4	Dual functionality (SFP based Gigabit ports or Ethernet 10/100/1000 ports)

### 3.13 REMOTE ASYNCHRONOUS NODE EQUIPMENT

Technical Schedule	Unit	Details
Hardware		
Manufacturer		IBM
Type		7036 P16
Ports	16	RJ-45 Ethernet 10/100 ports

### 3.14 HMI Multi-Display Workstations

#### 3.14.1 1 and 2 Display HMI

Technical Schedule	Unit	Details
Operating System		Windows 7 Professional, 64bit
Hardware		
Manufacturer		Dell
Type		OptiPlex XE (DT)
CPU		Intel Pentium Dual Core E5300 (2.6GHz, 2MB)
Working memory	1	2 GB DDR3 RAM with 1333 MHz ( 2*1GB)
Hard disk	2	250GB 7.2K RPM 3.5" SATA
LAN Interface	1	Intel PRO/1000 Network Adapter
Media	1	16x DVD+/- RW SATA DVD Drive
Power Supply	1	System AC Power Supply 300W, 240V AC 50/60Hz

	1	Power Cord (5-foot), 250V/10A
Display Port connections	1	NVIDIA Quadro NVS295, 256MB graphic card with 2 Display Ports
Accessories		Mouse, Keyboard
		Loudspeakers ( Dell AX210CR )

### 3.14.2 3-Display HMI

Technical Schedule	Unit	Details
Operating System		Windows 7 Professional, 64bit
Hardware		
Manufacturer		Dell
Type		OptiPlex XE (DT)
CPU		Intel Pentium Dual Core E5300 (2.6GHz, 2MB)
Working memory	1	2 GB DDR3 RAM with 1333 MHz ( 2*1GB)
Hard disk	2	250GB 7.2K RPM 3.5" SATA
LAN Interface	1	Intel PRO/1000 Network Adapter
Media	1	16x DVD+/- RW SATA DVD Drive
Power Supply	1	System AC Power Supply 300W, 240V AC 50/60Hz
	1	Power Cord (5-foot), 250V/10A
Display Port connections	2	NVIDIA Quadro NVS295, 256MB graphic card with 2 Display Ports
Accessories		Mouse, Keyboard
		Loudspeakers ( Dell AX210CR )

### 3.15 LCD Displays

Technical Schedule	Unit	Details
Hardware		
Manufacturer		Dell
Type		Ultra-Sharp U2410
Viewable Image Size		24" Widescreen
Maximum Resolution		1920 x 1600 at 60 Hz
Connections	1	VGA (analog)
	1	DVI-D (digital) with HDCP
	1	DisplayPort
	1	HDMI
Power Connection	1	240V AC, 50 Hz / 75W

### 3.16 Clocking Device

Technical Schedule	Unit	Details
Hardware		
Manufacturer		HOPF
Type		7001RC-GPS
IO ports	1	Serial ports (RS-232 / RS-422, SUB-D 25 )
	5	Serial ports (RS-232 / RS-422, SUB-D 9 )
	1	DCF-SIM
	1	GPS in
	1	10/100 Ethernet port (RJ-45)

### 3.17 Magnetic Tape Drives

Technical Schedule		Details
Hardware		
Manufacturer		IBM
Type		TS2250

### 3.18 List of hardware Abbreviations

<b>Abbreviation</b>	<b>Acronym</b>	<b>Definition</b>
ADM	Administration Package	ADM package servers contain the executable program files and source code and also maintain the online and offline databases
COM	Communication Package	COM package servers handle all internal communication between the servers of the
HMC	Hardware Management Console	Management console installed in a server rack, consisting of keyboard, pointing device and monitor that allows to locally manage all servers
HMI	Human Machine Interface	Workstation for supervisory control and data
IPS	Independent Front End System	IFS package servers perform (RTU) scan functions and transmit control commands to them
LAN	Local Area Network	Computer network that connects computers and
LT O	Linear Tape Open	Data storage technology based using magnetic tape devices
NTP	Network Time Protocol	Protocol standard for clock synchronization
RAN	Remote Asynchronous Node	Serves as port replicator to the IFS hardware to connect multiple communication lines to the RTUs
RTU	Remote Terminal Unit	RTU is a microprocessor-controlled electronic device that interfaces objects in the physical world to a SCADA system by transmitting telemetry data to the system and/or altering the state of connected objects based on control
SCADA	Supervisory Control and Data Acquisition	Computer system that monitors and controls industrial, infrastructure, or facility-based processes; information is being read from remote stations (utilizing RTU equipment) and is being processed, displayed and stored for
UI	User Interface Package	UI Package Servers provide local and remote user interface data handling (presentation, control and logging for dispatchers/operator and other operations personnel)

### 3.19 Software

#### 3.19.1 Base System Software

All servers execute positions of the Base System Software. At a minimum this includes the System Utilities, Database, Case Management and Inter-process Communications. Different computers have different programs executing, depending on the purpose for which each server and workstation is configured. For example, a workstation in the User Interface subsystem has display presentation programs. Similarly, the Communicator server has programs for performing SCADA data processing, economic dispatch, and so on.

The particular programs executing in a particular computer are determined by the software packages that are assigned to that server or workstation.

### **3.19.2 System Utilities**

The Spectrum Power 3 system utilities handle the details of low level operating system interfaces. Facilities provided include:

- Shared memory management
- Device handling
- File handling
- Time handling
- Message queue handling
- Configuration file scanning
- Tasking
- Timer interface
- Statistics

### **3.19.3 Database**

The Spectrum Power 3 database has two major components: primitive and operational. The primitive data base is the source of the data that is used in the operational side. The operational side is where the results of running the system are stored. The operational database makes use of the following data storage mechanisms:

Oracle—Operational Oracle is used by the Interchange Transaction Scheduler, Outage Scheduler and, optionally, the Historical Information System.

Spectrum Power 3 Relations — Stores the real-time image of the power system which is referred to as the NIM (Network Image).

Schedules—for storing scheduling information.

The primitive database makes use of the following data storage mechanisms:

- Oracle
- Spectrum Relations

- The Primitive Database Management (PDM) function governs the entry of the source data, the validation of the data and the transfer of the data into the operational side of the database. This process is called Job Management.
- The Oracle tables in PDM do not necessarily have the same structure as the Operational Oracle tables. However, the Spectrum Power 3 Relations and Application Data Relations (Relations) are identical in structure in both the primitive and operational databases.
- The Relations in the operational database are referred to as Copy 0 (Process Copy) and the Relations in the primitive database are referred to as Copy 1 (Database Administration Copy). The purpose of the Copy 1 is to enable the entry of parameterization information and to enable display work to be done.

The Operational Database system provides the following features:

- Fast response for reading and writing data
- Ability to insert and delete as well as modify data records

*Physical clustering (storing of logically related information in physical proximity)*

### **3.20 COMPLIANCE OR NON-COMPLIANCE WITH SPECIFICATION**

Tenderer shall submit with their tender a schedule listing returnable documents indicating compliance or non-compliance with the requirements of the specification.

### **REQUIREMENTS**

The Contractor shall maintain the system for a period of 36 months. Included are also various power supplying systems. In some cases, assistance with repair or replacement of the faulty equipment would be required. Some minor upgrades, modifications and new installations should be also included in the contract. *For online maintenance it shall be possible for the contractor to connect to the Development SCADA via an ASDL connection.*

During this maintenance contract the contractor is required to execute the following tasks.

- Monthly inspection visits to all sites.
- Breakdown visits to restore the system where and when required

### **3.21 INTERRUPTION OF SERVICE**

The maximum allowed interruption of service shall not exceed 8 hours from the time the fault is reported.

### **3.22 EXECUTION OF WORK**

The contractor shall furnish with this tender the engineers with extensive experience they have with the above-mentioned equipment and the number and type of personnel he intends employing for this contract.

It is the requirement of the tenderer to dedicate engineers to the contract with at least 5 years of experience in SCADA system and a degree or NQF level 7 in the relevant engineering field recognized by SAQA. Further to this it will also be required that the involved engineers have project relevant experience to assist the City of Tshwane with their database structures and system setup.

The contractor must setup an office within the City of Tshwane if they are not from the City of Tshwane.

### **3.23 FAULT REPORTING**

The City of Tshwane will report any fault to be attended to by the contractor telephonically and confirm via the email. A monthly fault report shall be submitted by the contractor detailing all work carried out. A monthly report shall also be submitted detailing all the stations visited during the inspection visit.

### **3.24 PAYMENT**

The maintenance costs will be paid monthly in arrears on condition that the monthly fault report is submitted with the invoice.

### **3.25 NON-PERFORMANCE**

Should the contractor fail to maintain and or restore the SCADA system in a properly functional state within 30 days from the date of notice, the City of Tshwane reserve the right to impose a penalty of 5% per job card.

### 3.26 CONFIDENTIALITY

All information provided by respondents will be treated as confidential except for disclosures that may be required under prevailing Public Procurement Regulations or policies.

The tenderer shall supply documentation to CoT which will enable them to support the system in-house not infringing in any intellectual property rights.

The data contained in the current and future Database will remain the property of CoT and under no circumstances shall copies be distributed in any way to any 3rd party.

## 4. STAGES OF EVALUATION

**Stage 1:** Administrative compliance

**Stage 2:** Local Content and Production

**Stage 3:** Mandatory Requirement

**Stage 4:** Functionality Criteria

**Stage 5:** Preferential Points System

### 4.1 ADMINISTRATIVE COMPLIANCE

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

### 4.2 LOCAL CONTENT AND PRODUCTION

The tenderers will be evaluated on the compliance of the minimum threshold for local production and content for the required goods. Bidders must complete MBD6.2 and its annexure to comply with the minimum threshold. Exemption letters must be obtained from Department of Trade and Industry in case bidder cannot meet the minimum threshold. Failure to comply with the minimum threshold or submission of exemption letter will result in disqualification of the bidder.

PRODUCT FOR DESIGNATION	LOCAL CONTENT %
Power Supply's : System AC Power Supply 300W, 240V AC 50/60Hz	100%
LAN Interface Cards : PRO/1000 Network Adapter	100%
Network Switches : RJ-45 Ethernet 10/100/1000 ports	100%



Peripheral Switches : RJ-45 Ethernet 10/100/1000 ports	100%
Network cabling with RJ-45 Ethernet Connectors	100%
Hard Drives	100%
HMI Operating Software	0%
Server with Operating Software	0%

**NOTE:**

Bidders should first complete Annexure D. After completing Annexure D, bidders should complete Annexure E and then consolidate the information on Annexure C. **Annexure C should be fully completed and signed and then submitted with the bid documentation at the closing date and time of the bid in order to substantiate the Annexure made in paragraph (c) below.** Annexures D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Annexures C, D and E with the actual values for the duration of the contract.

#### **4.3 MANDATORY REQUIREMENT**

It is the requirement of the tenderer to dedicate the following personnel to the contract:

- Project Manager with minimum 5 years relevant experience on integrating and commissioning of SCADA systems and a degree in Project Management or NQF level 7 recognised by SAQA.
- Software Engineer with minimum 5 years relevant experience on SCADA Systems and a degree in Software Engineering or Computer Science or NQF level 7 recognised by SAQA.
- Technician with minimum 3 years relevant experience on server hardware installations and software configuration and a National Diploma in Electronic Engineering or Computer Science or NQF level 6 recognised by SAQA.

#### 4.4 FUNCTIONALITY CRITERIA

The minimum score of **70 points (out of 100)** is required to go through to the next stage of the tender. All bidders who fail to meet the said minimum score will be disqualified and will therefore not be considered further for evaluation.

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	HIGHEST POSSIBLE SCORE
Company experience in the supply, Installation, testing, and commissioning of electricity utility SCADA systems. Submission of signed letters of successfully completed projects with contact details and appointment letters on letterhead of the company.	Signed appointment letter and completion certificate for 1 project	1	10	50
	Signed appointment letters and completion certificates for 2 projects	3		
	Signed appointment letters and completion certificates for 3 projects and above	5		
Local Economic participation: Bidders shall submit their rates and taxes as proof. The rates and taxes submitted by bidders should be in the name of the company or the name of the director(s). Signed lease agreement can also be attached if there are no rates and taxes.	Within City of Tshwane	3	5	15
	Within Gauteng Province	2		
	Outside Gauteng Province	1		
Experience Required: Project Manager, minimum 5 years relevant experience on integrating and commissioning of SCADA systems.	5 years experience	3	2	10
	6 years experience	4		
	7 years experience and above	5		
Experience Required: Software Engineer, minimum 5 years relevant experience on SCADA Systems.	5 years experience	1	5	15
	6 years experience	2		

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	HIGHEST POSSIBLE SCORE
	7 years experience and above	3		
Experience Required: Technician, minimum 3 years relevant experience on server hardware installations and software configuration.	3 years experience	3	2	10
	4 years experience	4		
	5 years experience and above	5		
HIGHEST POSSIBLE SCORE				100

#### 4.5 PREFERENTIAL POINTS SYSTEM

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

- 80 points for price
- 20 points for B-BBEE status (service provider to submit the certified copy of the B-BBEE level rating certificate).

## 5. PRICING SCHEDULE

SCADA Preventive Maintenance (on-site)				
Item No.	Description	Unit rate/Hour ZAR (Excl. Vat)	Estimated Quantity	Total price (Excl. Vat) ZAR
<b>1</b>	<b>Engineer Scope of Service</b>			
<b>1.1</b>	Service Times: Weekdays between 8:30 and 16:30 with the exception of public holidays			
<b>1.2</b>	Service Times: After hours weekdays between 16:30 and 8:30 with the exception of public holidays			
<b>1.3</b>	Service Times: Saturday, Sunday and public holidays in South Africa			
<b>1.4</b>	Travel time from the place of work within the City of Tshwane to Capital Park in the City of Tshwane			
<b>2</b>	<b>Technician Scope of Service</b>			
<b>2.1</b>	Service Times: Weekdays between 8:30 and 16:30 with the exception of public holidays			
<b>2.2</b>	Service Times: After hours weekdays between 16:30 and 8:30 with the exception of public holidays			
<b>2.3</b>	Service Times: Saturday, Sunday and public holidays in South Africa			
<b>2.4</b>	Travel time from the place of work within the City of Tshwane to Capital Park in the City of Tshwane			

SCADA Teleservice and Telephone Support				
Item No.	Description	Unit rate/Hour ZAR (Excl. Vat)	Estimated Quantity	Total price (Excl. Vat) ZAR
<b>3</b>	<b>Engineer Scope of Service</b>			
<b>3.1</b>	Service Times: Weekdays between 8:30 and 16:30 with the exception of public holidays Reaction time: 8 hours within the agreed service times			
<b>3.2</b>	Service Times: After hours weekdays between 16:30 and 8:30 with the exception of public holidays			
<b>3.3</b>	Service Times: Saturday, Sunday and public holidays in country of origin			
<b>4</b>	<b>Technician Scope of Service</b>			
<b>4.1</b>	Service Times: Weekdays between 8:30 and 16:30 with the exception of public holidays Reaction time: 8 hours within the agreed service times			
<b>4.2</b>	Service Times: After hours weekdays between 16:30 and 8:30 with the exception of public holidays			
<b>4.3</b>	Service Times: Saturday, Sunday and public holidays in country of origin			
<b>Spectrum Power Training (on-site)</b>				

Item No.	Description	Cost/Person ZAR (Excl. Vat)	Estimated Quantity	Total price (Excl. Vat) ZAR
5	Service Times: Weekdays between 8:30 and 16:30 with the exception of public holidays			
<b>Grand Total Price (Vat Excl.) ZAR</b>				
<b>Vat</b>				
<b>Grand Total Price (Vat Incl.) ZAR</b>				

Hardware				
Item No.	Description	Unit price (Excl. Vat) ZAR	Quantity	Total price (Excl. Vat) ZAR
6	<b>Administration Servers</b>			
6.1	CPU 6-core 3.7GHz POWER7			
6.2	Working memory 8GB, 1066MHz, 1GB		2	
6.3	Hard disk 73GB 15K RPM SAS		6	
6.4	Hard disk 146GB 15K RPM SAS		6	
6.5	EXP 12S Extension Drawer		1	
6.6	SAS Cable (X) Adapter, Dual Controller		1	
6.7	SAS Cable (YO) Adapter, Single Controller		1	
6.8	PCIe LP 2-x4-port SAS Adapter 3GP		1	
6.9	LAN Interface Quad-Port 1GB HEA Daughter Card		1	
6.10	DASD/Media Backplane 6 SFF DASD/SATA DVD		1	
6.11	SATA Slim line DVD Drive		1	

<b>6.12</b>	System AC Power Supply 1725W		2	
<b>7</b>	<b>UI Servers</b>			
<b>7.1</b>	CPU 4-core 3.0GHz POWER7			
<b>7.2</b>	Working memory 8GB, 1066MHz, 1GB		2	
<b>7.3</b>	Hard disk 73GB 15K RPM SAS		4	
<b>7.4</b>	LAN Interface Quad-Port 1GB HEA Daughter Card		1	
<b>7.5</b>	DASD/Media Backplane 6 SFF DASD/SATA DVD		1	
<b>7.6</b>	SATA Slim line DVD Drive		1	
<b>7.7</b>	System AC Power Supply 1725W		2	
<b>7.8</b>	Power Cord (9-foot), Drawer to IBM PDU, 250V/10A		1	
<b>7.9</b>	Power Cord (5-foot), Drawer to IBM PDU, 250V/10A		1	
<b>8</b>	<b>Development Server</b>			
<b>8.1</b>	CPU 4-core 3.0GHz POWER7			
<b>8.2</b>	Working memory 8GB, 1066MHz, 1GB		1	
<b>8.3</b>	Hard disk 73GB 15K RPM SAS		4	
<b>8.4</b>	Hard disk 300GB 10K RPM SAS		2	
<b>8.5</b>	LAN Interface Quad-Port 1GB HEA Daughter Card		1	
<b>8.6</b>	DASD/Media Backplane 6 SFF DASD/SATA DVD		1	
<b>8.7</b>	SATA Slim line DVD Drive		1	
<b>8.8</b>	System AC Power Supply 1725W		1	
<b>9</b>	<b>IFS Servers</b>			
<b>9.1</b>	CPU 4-core 3.0GHz POWER7			
<b>9.2</b>	Working memory 8GB, 1066MHz, 1GB		1	
<b>9.3</b>	Hard disk 73GB 15K RPM SAS		4	

<b>9.4</b>	LAN Interface Quad-Port 1GB HEA Daughter Card		1	
<b>9.5</b>	DASD/Media Backplane 6 SFF DASD/SATA DVD		1	
<b>9.6</b>	SATA Slim line DVD Drive		1	
<b>9.7</b>	System AC Power Supply 1725W		2	
<b>10</b>	<b>Communication Servers</b>			
<b>10.1</b>	CPU 4-core 3.0GHz POWER7			
<b>10.2</b>	Working memory 8GB, 1066MHz, 1GB		1	
<b>10.3</b>	Hard disk 73GB 15K RPM SAS		4	
<b>10.4</b>	Hard disk 300GB 10K RPM SAS		2	
<b>10.5</b>	LAN Interface Quad-Port 1GB HEA Daughter Card		1	
<b>10.6</b>	PCIe LP 4+Port Async EIA-232 Adapter		1	
<b>10.7</b>	DASD/Media Backplane 6 SFF DASD/SATA DVD		1	
<b>10.8</b>	SATA Slim line DVD Drive		1	
<b>10.9</b>	System AC Power Supply 1725W		2	
<b>11</b>	<b>Hardware Management Console</b>			
<b>11.1</b>	Panel Console Kit		1	
<b>11.2</b>	Keyboard		1	
<b>11.3</b>	Internal Modem (incl. Cable)		1	
<b>11.4</b>	Ethernet Cable 15m		1	
<b>11.5</b>	HMC CR5/6 Red. Power Supply 675W		1	
<b>12</b>	<b>Firewall Equipment</b>			
<b>12.1</b>	2GB Memory  Up to 225 MB/s 3DES/AES Throughput  Ports: 4X Gigabit Ethernet		2	



	1X Fast Ethernet 2X Serial RJ45 (console and auxiliary) 2X USB 2.0			
<b>13</b>	<b>Network Switches</b>			
<b>13.1</b>	128 MB DRAM 16 MB Flash Memory 24X RJ-45 Ethernet 10/100/1000 ports 4X SFP based Gigabit ports		3	
<b>14</b>	<b>Peripheral Switches</b>			
<b>14.1</b>	64 MB DRAM 32 MB Flash Memory 20X RJ-45 Ethernet 10/100/1000 ports 4X Dual functionality (SFP based Gigabit ports or Ethernet 10/100/1000 ports)		3	
<b>15</b>	<b>Remote Asynchronous Node Equipment</b>			
<b>15.1</b>	16X RJ-45 Ethernet 10/100 ports		1	
<b>16</b>	<b>Clocking Device</b>			
	IO ports: 1X Serial ports (RS-232 / RS-422, SUB-D 25 ) 5X Serial ports (RS-232 / RS-422, SUB-D 9 ) 1X DCF-SIM 1X GPS in 1X 10/100 Ethernet port (RJ-45)		1	
<b>Hardware Grand Total Price (Vat Excl.) ZAR</b>				
<b>Vat</b>				
<b>Hardware Grand Total Price (Vat Incl.) ZAR</b>				

## **6. AWARD**

Tender will be awarded as a whole.

## **7. TYPE OF AGREEMENT REQUIRED**

Service Level Agreement

## **8. 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.

## **9. MARKET ANALYSIS**

The city of Tshwane reserves the right to conduct market analysis. Should the city exercise this option, Where a tenderer offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the tenderer if they will be able to deliver on the price, if a tenderer confirm that they cannot, The tenderer will be disqualified on the basis of being non-responsive. If they confirm that they can deliver, a tight contract to mitigate the risk of non-performance will be entered into with the service provider. Further action on failures by the supplier to deliver will be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.

The city further reserves the right to negotiate a market related price with a tenderer scoring the highest points. If the tenderer does not agree to a market-related price, the city reserves the right to negotiate a market-related price with the tenderer scoring the second highest points, if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points. If a market-related price is not agreed, the city reserves the right to cancel the tender.

## **10. DRAFT SERVICE LEVEL AGREEMENT**

Attached

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	EED 16-2022.23	CLOSING DATE:	21 February 2023	CLOSING TIME:	10:00
DESCRIPTION	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED				
<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	Edward Oseile
CONTACT PERSON	Mulondi Rasekgala	TELEPHONE NUMBER	012 358 3747
TELEPHONE NUMBER	012 358 6636	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	edwardo@tshwane.gov.za
EMAIL ADDRESS	mulondin@tshwane.gov.za		

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.

- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO 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)
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- 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, shareholder<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**

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

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

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

### 1. GENERAL CONDITIONS

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

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

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

1.3 Preference points for this bid shall be awarded for:

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

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

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

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

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

## 2. DEFINITIONS

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

account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

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

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

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



- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & & P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \\
 & \mathbf{or} &
 \end{array}$$

Where

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

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

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

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

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

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

## 6. BID DECLARATION

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

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

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

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

## 8. SUB-CONTRACTING

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

*(Tick applicable box)*

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

- 8.1.1. If yes, indicate:

i) What percentage of the contract will be subcontracted .....%

- ii) The name of the sub-contractor .....
- iii) The B-BBEE status level of the sub-contractor .....
- iv) Whether the sub-contractor is an EME.

**(Tick applicable box)**

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

## 9. DECLARATION WITH REGARD TO COMPANY/FIRM

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

9.2 VAT number: .....

9.3 Company registration number: .....

### 9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

### 9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

### 9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

### 9.7 MUNICIPAL INFORMATION

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

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

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

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

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

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

WITNESSES

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

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE .....

ADDRESS: .....  
.....  
.....

## **DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

### **1. General Conditions**

- 1.1 Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2 Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3 Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BEE.
- 1.4 A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5 The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) on the date of advertisement of the bid as indicated in paragraph 3.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

- 1.6 A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED	100%

3. Does any portion of the goods or services offered have any imported content?

**(Tick applicable box)**

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

- 3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.resbank.co.za](http://www.resbank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION  
(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. EED 16-2022/23**

**ISSUED BY:** (Procurement Authority / Name of Institution): City of Tshwane  
.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thedti.gov.za/industrial\\_development/ip.jsp](http://www.thedti.gov.za/industrial_development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names), do hereby declare, in my capacity as ..... of ..... (name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R

Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.**

**The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

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

**WITNESS No. 2** \_\_\_\_\_

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



## Annex C

## Local Content Declaration - Summary Schedule

(C1) )	<b>Tender No.</b>	EED 16-2022/23
(C2) )	<b>Tender description:</b>	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED
(C3) )	<b>Designated product(s):</b>	
(C4) )	<b>Tender Authority:</b>	
(C5) )	<b>Tendering Entity name:</b>	
(C6) )	<b>Tender Exchange Rate:</b>	<div>Pula</div> <div></div> <div>EU</div> <div></div> <div>GBP</div> <div></div>
(C7) )	<b>Specified local content %</b>	100%

**NOTE: VAT TO BE EXCLUDED FROM ALL CALCULATIONS**

## Calculation of local content

Tender item no's	List of items	Tender price - each (excl VAT)	Exempted imported value	Tender value- net of exempted imported content	Imported value	Local value	Local content % (per item)
------------------	---------------	--------------------------------	-------------------------	--	----------------	-------------	----------------------------

## Tender summary

Tender Qty	Total tender value	Total exempted imported content	Total Imported content
------------	--------------------	---------------------------------	------------------------



Date:

\_\_\_\_\_

**(C25) Average local content % of tender**

\_\_\_\_\_

## Annex D

## Imported Content Declaration - Supporting Schedule to Annex C

(D1)	<b>Tender No.</b>	EED 16-2022/23				NOTE: VAT TO BE EXCLUDED FROM ALL CALCULATIONS	
(D2)	<b>Tender description:</b>	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED					
(D3)	<b>Designated Products:</b>						
(D4)	<b>Tender Authority:</b>						
(D5)	<b>Tendering Entity name:</b>						
(D6)	<b>Tender Exchange Rate:</b>	Pula		EU		GBP	

## A. Exempted imported content

## Calculation of imported content

## Summary

Tender item no's	Description of imported content	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Exchange Rate	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Tender Qty	Exempted imported value
(D7)	(D8)	(D9)	(D10)	(D11)	(D12)	(D13)	(D14)	(D15)	(D16)	(D17)	(D18)



(D19) Total exempt imported value R

This total must correspond  
with Annex C - C 21

B. Imported directly by the Tenderer				Calculation of imported content						Summary	
Tender item no's	Description of imported content	Unit of measure	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Tender Qty	Total imported value
(D20)	(D21)	(D22)	(D23)	(D24)	(D25)	(D26)	(D27)	(D28)	(D29)	(D30)	(D31)

				<b>(D32) Total imported value by tenderer</b>						R	
<b>C. Imported by a 3rd party and supplied to the Tenderer</b>				<b>Calculation of imported content</b>						<b>Summary</b>	
Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT	Quantity imported	Total imported value
(D33)	(D34)	(D35)	(D36)	(D37)	(D38)	(D39)	(D40)	(D41)	(D42)	(D43)	(D44)
<b>(D45) Total imported value by 3rd party</b>										R	
<b>D. Other foreign currency payments</b>				<b>Calculation of foreign currency payments</b>					<b>Summary of payments</b>		
Type of payment	Local supplier making	Overseas beneficiary	Foreign currency value paid	Tender Rate of Exchange						Local value of payments	

	the payment			
(D46)	(D47)	(D48)	(D49)	(D50)

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

Signature of tenderer from Annex B

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

R

Date:

**This total must correspond  
with Annex C - C 23**

## Annex E

## Local Content Declaration - Supporting Schedule to Annex C

(E1)	<b>Tender No.</b>	EED 16-2022/23	<b>NOTE: VAT TO BE EXCLUDED FROM ALL CALCULATIONS</b>
(E2)	<b>Tender description:</b>	TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED	
(E3)	<b>Designated products:</b>		
(E4)	<b>Tender Authority:</b>		
(E5)	<b>Tendering Entity name:</b>		

[illegible]



<b>(E9) Total local products (Goods, Services and Works)</b>		R

(E10) **Manpower costs** (Tenderer's manpower cost) R

(E11) **Factory overheads** (Rental, depreciation & amortisation, utility costs, consumables etc.) R

(E12) **Administration overheads and mark-up** (Marketing, insurance, financing, interest etc.) R

(E13) Total local content R

**This total must correspond with Annex C - C24**

Signature of tenderer from Annex B

Date: \_\_\_\_\_

The exemption process that **the dtic** follows is that if there is a particular designated product and the minimum threshold for local content cannot be met for various reasons, bidders must apply for exemption (when the tender is still open, before closing date). After checking with the industry, **the dtic** will then decide whether or not to grant an exemption. This is per tender.

The exemption request must be on the **bidding company's signed letter-head** and cover the following:

- The procuring entity/government department/state owned company,
- Tender/bid number,
- Closing date,
- Item(s) for which the exemption is being requested for
- Description of the goods, services or works for which the requested exemption item will be used for and the local content that can be met,
- Reason(s) for the request.
- Attach specification issued by the procuring entity
- Supporting letters from local manufacturers/sub-suppliers (if applicable)

Please note that it takes 3-5 working days for **the dtic** to process exemption letters and no requests for exemptions will be considered after the tender has closed.

The request should be addressed to the attention of:

**Dr. Tebogo Makube**

**Chief Director: Industrial Procurement Unit**

**The Department of Trade and Industry**

**Private Bag X84,**

**Pretoria,**

**Gauteng,**

**0001**

The request should be forwarded through email to Dr Makube on [TMakube@thedtic.gov.za](mailto:TMakube@thedtic.gov.za) and copy Ms Matidza ([CMatidza@thedtic.gov.za](mailto:CMatidza@thedtic.gov.za))

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

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

**PART 1 (TO BE FILLED IN BY THE BIDDER)**

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to **CITY OF TSHWANE MUNICIPALITY** in accordance with the requirements and specifications stipulated in bid number **EED 16-2022/23** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of 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);
    - Technical Specification(s);
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - 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 goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

**WITNESSES**

1. ....

2. ....

DATE: .....

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

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

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

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1. ....

2. ....

DATE: .....

## CONTRACT FORM: RENDERING OF SERVICES

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **EED 16-2022/23** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due 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 SERVICES**

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

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

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

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....

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

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

Item	Question	Yes	No
4.1	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?  (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). <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>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	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)? <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>	Yes <input type="checkbox"/>	No <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: **EED 16-2022/23**

**TENDER FOR SUPPORT, SERVICE AND MAINTENANCE OF SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) FOR THE PERIOD OF THREE YEARS, AS AND WHEN REQUIRED**

(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.

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of 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 <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>
<b>4. Standards</b>	4.1	The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
<b>5. Use of contract documents and information inspection.</b>	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.
<b>6. Patent rights</b>	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.
<b>7. Performance security</b>	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: <ul style="list-style-type: none"> <li>(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</li> <li>(b) a cashier's or certified cheque</li> </ul>
	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.
<b>8. Inspections, tests and analyses</b>	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.

<b>11. Insurance</b>	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.
<b>12. Transportation</b>	12.1	Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
<b>13. Incidental services, services</b>	13.1	<p>The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:</p> <ul style="list-style-type: none"> <li>(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;</li> <li>(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;</li> <li>(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;</li> <li>(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</li> <li>(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.</li> </ul>
	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.
<b>14. Spare parts</b>	14.1	<p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> <li>(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and</li> <li>(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.</li> </ul> </li> </ul>
<b>15. Warranty</b>	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.

Js General Conditions of Contract (revised July 2010)

## SERVICE LEVEL AGREEMENT

Entered into between

### THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

(Hereinafter referred to as the “**City**”)

Duly represented by:

In his capacity as: **The City Manager**

Duly authorised hereto

**AND**

\_\_\_\_\_ Service Provider \_\_\_\_\_

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

(Hereinafter referred to as the “**Service Provider**”)

Duly represented by: \_\_\_\_\_

In his capacity as: \_\_\_\_\_

Duly authorised hereto

## SERVICE LEVEL AGREEMENT

Entered into between

## THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

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

(Herein referred to as the "**CITY**")

**AND**

\_\_\_\_\_ Service Provider \_\_\_\_\_

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

Herein represented by \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ duly authorised thereto under and by virtue of a resolution of the Board passed on \_\_\_\_\_, 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**")

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**RECORDAL:**

**WHEREAS** the City requires the Support, Service and Maintenance of Supervisory Control and Data Acquisition System (SCADA) at Capital Park Electricity Network Control Centre for the Period of Three years, as and when Required

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

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

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

**NOW THEREFORE** the Parties have agreed to enter into this Agreement, in terms of which the service provider shall support, service and maintain the Supervisory Control and Data Acquisition System (SCADA) at Capital Park Electricity Network Control Centre in accordance with the terms and subject to the conditions of this Agreement:

## 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:

**“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;

**“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;

**“Business Week”** means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;

**“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;

**“Contact Persons”** means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 35 and who can be substituted in writing from time to time;

**“Contract Price”** shall mean the amount reflected as the contract price in clause 0 below;

**“Contract Period”** means three years

**“Effective Date”** means appointment date;

**“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;

**“Month”** means a calendar month;

**“Parties”** means the City and the Service Provider and “Party” means either of them as the context requires;

**“Services”** means services to be provided by the Service Provider to the City as stated in clause 8 below and detailed in the terms of reference

**“Service Provider”** means appointed company

, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number:

\_\_\_\_\_

**“Signature Date”** means the date of signature of this Agreement by the Party signing last;

**“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;

**“Subcontractor”** means the third party with whom the Service Provider enters into a Subcontract;

**“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

**“VAT”** means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

## **INTERPRETATION**

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

Unless the context clearly indicates a contrary intention, any word connoting:

Any singular shall be deemed to include a reference to the plural and vice versa;

Any one gender shall be deemed to include a reference to the other two genders;  
and

A natural person shall be deemed to include a reference to a legal or juristic person.



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.

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.

Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.

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.

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.

## **APPOINTMENT**

The City hereby appoints the Service Provider, who accepts such appointment as stated in the Appointment letter dated \_\_\_\_\_, to provide the Services in accordance with the terms and subject to the conditions of this Agreement and the attached Terms of Reference.

## **PURPOSE OF THE AGREEMENT**

The Purpose of this Agreement is to:

Formalise and regulate the working relationship between the Parties;

Set out the roles and responsibilities of the Parties; and

Define process and procedures to be followed by the Parties.

## **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.

## **DURATION**

This Agreement shall commence on the Effective Date and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 0 below.

## **CONTACT PERSON**

The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person.

The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.

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.

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.

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.

## **SCOPE OF GENERAL SERVICES**

The Service Provider shall, for the duration of this Agreement, provide the Services set out in the details in the terms of the attached Terms of Reference.

## **PRICE AND PAYMENT**

The City shall pay to the Service Provider a Contract Price in the sum of R 0. 00 (contract price in words).

All payments under this Agreement shall be made through an official purchase order, upon receipt of valid and undisputed Tax Invoices 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.

All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

Valid Tax Invoices shall be submitted. Payment valid tax invoices shall be made by The City within 30 (thirty) days after the date of receipt by The City of the Service Provider's tax invoice.

The City shall pay the amount reflected on a Tax Invoice once the City's Contact Person and Finance has verified that the Services set out in a schedule have been rendered and the Tax Invoice amount has been approved by the City.

All Tax Invoices shall be addressed to the City.

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:

**Bank:**

**Account type:**

**Account No:**

**Branch No:**

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.

## **PRICE RESTRUCTURING**

The Service Provider may apply for a price review every year, every 12 (twelve) months from the appointment date.

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.

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 supplier at a total delivered cost that is lower than the total delivered cost of the Services acquired hereunder from the Service Provider, the City shall have the right to notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Contract Price and any other charges hereunder, on such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.

If the Service Provider fails to do so or cannot legally do so, The City may:

acquire the Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of the City and the Service Provider hereunder shall be reduced accordingly;

terminate this Agreement without any penalty, liability or further obligation; or

continue under this Agreement.

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.

## **SERVICE LEVELS**

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*:

Capacity allocations in accordance with the Service to be provided;

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.

Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 0 above.

## **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.

## **PENALTY**

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

Exercise its rights in terms of clause 0 below.

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

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.

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.

Should the contractor fail to maintain and or restore the SCADA system in a properly functional state within 30 days from the date of notice, the City of Tshwane reserve the right to impose a penalty of 5% per job card

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 0 below.

## **ACCESS**

The City shall allow the Service Provider reasonable access to its premises, provided that:

Access is related to the Services to be provided by the Service Provider; and

The Service Provider adheres to all rules, regulations and instructions applicable at the City's premises.

The City shall grant the Service Provider and/or its employees, to its premises to perform its obligations in terms of this Agreement.

The Service Provider and its employees shall at all time when entering the premises and/or Service Areas and/or Delivery Areas of the City comply with all rules, laws, regulations and policies of the City.

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

The City is entitled to cancel an order, reschedule delivery of the Goods or change the Delivery Area and Delivery Date on fourteen (14) days written notice to the Service Provider.

## **INSPECTION**

The City may at any time inspect the Goods and/or Services levels of the Service Provider in terms of this Agreement.

If the City is, at any time, dissatisfied with the service levels then the City shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.

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.

Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to invoke the provisions of clauses and/or clause 0 below.

To enable the City to determine whether the Goods and/or Services rendered in terms of this Agreement are being complied with the Service Provider shall:

Provide the City with such information as it may reasonably require;

Allow the City to inspect and take copies of any records of the Service Provider relating to the Goods and/or Services.

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

### **Service Warranties**

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

It has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;

Has requisite capacity and capability to provide the Services in an expert manner;

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

All work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;

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;

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 delivering Goods and/or similar to the Services and/or Goods;

Which Services and/or Goods will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials;

Using and adopting any standards, processes and procedures required under this Agreement;

Free from any defects in material;

Maintaining and caused to be maintained the highest standard of care and diligence in providing the Services,

Ensuring that all applicable laws are observed;



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.

## **Indemnity**

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.

## **STATUTORY AND EMPLOYMENT ISSUES**

### **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.

## **SUB-CONTRACTING**

The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party.

## **CONFIDENTIALITY**

The Service Provider acknowledge 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.

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.

The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

The information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

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

The information was received from a third Party not in breach of an obligation of confidentiality.

## **INTELLECTUAL PROPERTY RIGHTS**

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

All rights in the City name and logo remain the absolute property of the City.

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 any third party.

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.

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 Contractor 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.

Should any claim be made against the City by any third party in terms of clause 0 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.

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:

Obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

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

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

Withdraw the subject of infringement.

## **FORCE MAJEURE**

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.

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.

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").

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.

## **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.

## **CHANGE OF CONTROL / CIRCUMSTANCE**

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.

The Parties agree that should there be a change as envisaged in clause 0 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.

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

## **BREACH**

Subject to clause 0 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:

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

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

## **EARLY TERMINATION**

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

## **DISPUTES**

Save for clause 0 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:

The interpretation of the Agreement;

The performance of any of the terms of the Agreement;

Any of the parties' rights and obligations;

Any procedure to be followed;

The termination or cancellation or breach of this Agreement; or

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.

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 0 above shall apply.

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").

The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

At any place which the Parties agree, in writing, to be mutually convenient.

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.

If the arbitration is:

A legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;

An accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing;

Any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.

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, and then it shall be deemed to be a dispute of a legal nature?

The arbitrator may:

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;

Interview and question under oath the parties or any of their representatives;

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

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.

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

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.

Notwithstanding the provisions of clauses 0, 0, 0, 0, 0, 0, 0 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.

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

## **LAWS AND JURISDICTION**

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



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)).

## **NOTICES AND COMMUNICATIONS**

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

### **THE CITY:**

Office of the City Manager  
Tshwane House  
2nd Floor, Block D  
320 Madiba Street  
Pretoria, 0001  
P O Box 440  
Pretoria, 0001  
Fax: 086 214 9544  
Email: [citymanager@tshwane.gov.za](mailto:citymanager@tshwane.gov.za)

Attention:

Telephone:

E-mail:

### **THE SERVICE PROVIDER:**

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\_\_\_\_\_  
Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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.

Any notice given and any documentation delivered by any Party to another Party (hereinafter referred to as "the addressee") which:

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;

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.

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.

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 email.

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*.

## **GENERAL AND MISCELLANEOUS**

### **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.

### **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.

### **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.

### **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.

### **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.

## **EXECUTION**

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.

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

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20

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For and on behalf of **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**Duly represented by:**

**City Manager**

Witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20

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For and on behalf of Service Provider: \_\_\_\_\_

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

Witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

## RESOLUTION OF THE BOARD

Resolution by the Board of Directors of \_\_\_\_\_

made at a meeting held at \_\_\_\_\_ on \_\_\_\_\_.

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

### 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 a \_\_\_\_\_ of \_\_\_\_\_, 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**