

MEMORANDUM OF AGREEMENT

FOR THE

**SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED
INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING**

MADE AND ENTERED INTO BETWEEN

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

And

NCLOSE (PTY) LTD

REGISTRATION NO. [REDACTED]

Contract No: 092S/2023/24

PREAMBLE

WHEREAS Tender **092S/2023/24** was awarded to **NCLOSE (PTY) LTD** in line with the Supply Chain Management- Bid Adjudication Committee resolution **SCMB 62/10/24** dated **28 OCTOBER 2024**, for the **SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING** from 01 July 2025 and terminate on 30 June 2031.

AND WHEREAS it is recorded that this Contract will be governed by the provisions of the National Treasury's Conditions of Contract (revised July 2010), General Conditions of Contract for the Supply of Goods and/or Services, ("**GCC**"), read with the Special Conditions of Contract ("**SCC**") annexed hereto marked "**PART 2: SPECIAL CONDITIONS OF CONTRACT**".

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. PARTIES

The Parties to this Contract are:

- 1.1. **THE CITY OF CAPE TOWN**, a metropolitan municipality, established in terms of the Local Government: Municipal Structures Act. 117 of 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended ("**the Purchaser**"), herein represented by **Chief Digital Officer: IS&T** duly authorised hereto;
- 1.2. **NCLOSE (PTY) LTD**, a private company duly registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED], with its principal place of business situated at [REDACTED] [REDACTED] (the **Supplier**"), herein represented by [REDACTED] in his/her capacity as [REDACTED];

hereinafter, each a "Party" and together the "Parties".

2. INTERPRETATION

- 2.1. In the event of any conflict between the provisions of this Contract, the GCC and any Parts attached hereto, or any other document incorporated by reference to this Contract, save to the extent expressly stated to the contrary, such conflict will be resolved by giving precedence to such different parts of this Contract in the following purchase order of precedence:
 - 2.1.1. first, the terms and conditions of the SCC;
 - 2.1.2. second, the terms and conditions of the GCC;

- 2.1.3. third, Parts and Annexures to this Contract; and
- 2.1.4. fourth, any other documents incorporated by reference.

- 2.2. The provisions of this Contract supersede and replace the provisions of any previous agreement entered into between the Parties relating to the same subject matter.

3. APPOINTMENT AND DURATION

- 3.1. The Purchaser hereby appoints the Supplier to perform the Goods and/or Services for the Purchaser from the Commencement Date.
- 3.2. Unless terminated earlier in accordance with the provisions as set out in the GCC or any other provision in terms of this Contract, this Contract shall commence from 01 July 2025 and terminate on 30 June 2031.

4. MUTUAL GOOD FAITH / CO-OPERATION

- 4.1. The Parties represent and undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the execution of this Contract.
- 4.2. The Parties shall at all times during the continuance of this Contract observe the principles of good faith towards one another in the performance of their obligations in terms of this Contract.

5. OBLIGATIONS OF THE PURCHASER

- 5.1. The Purchaser undertakes to perform its obligations in accordance with the Contract, including but not limited to the Specifications (**PART 4: SPECIFICATIONS**), subject to the satisfactory fulfilment of the obligations by the Supplier as set out in this Contract.
- 5.2. The Purchaser shall monitor and evaluate the Supplier's performance in respect of the Goods and/or Services.

6. OBLIGATIONS OF THE SUPPLIER

- 6.1. The Supplier hereby agrees and undertakes to perform the Goods and/or Services to the Purchaser as set out in Specifications (**PART 4: SPECIFICATIONS**).

- 6.2. The Supplier will perform the Goods and/or Services as expeditiously as possible and furthermore agrees and undertakes to perform the goods and/or services in accordance with the operational requirements of the Purchaser.
- 6.3. The Supplier will ensure that the Goods and/or Services will be of a satisfactory quality and fit for purpose.
- 6.4. The Supplier shall, ensure that its employees, agents, representatives, sub-Suppliers and suppliers comply with this Contract and all applicable Laws in the execution of the Goods and/or Services.
- 6.5. The Supplier will not conduct any activity of whatsoever nature, which may be detrimental to the Purchaser's reputation and goodwill.

7. PRICING SCHEDULE

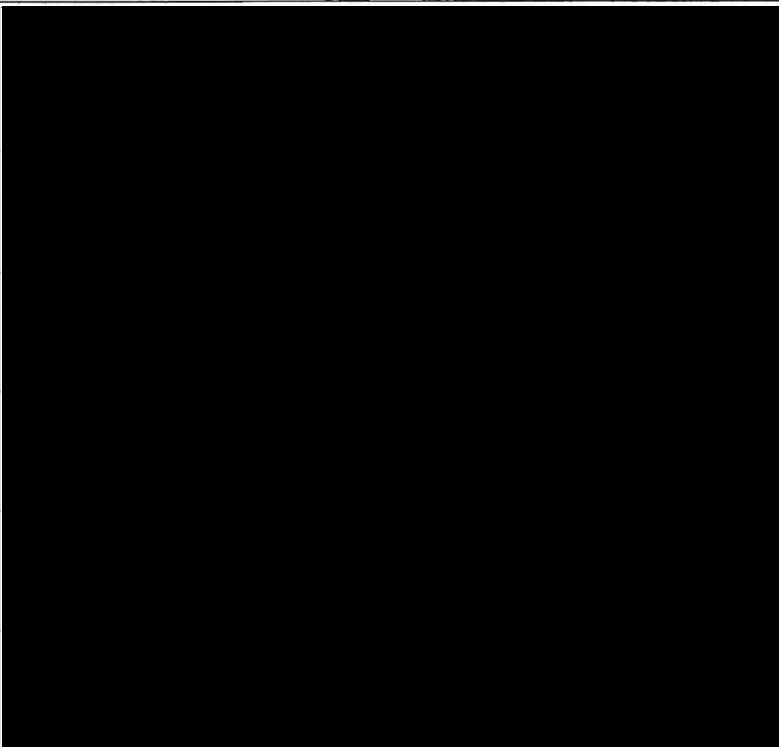
- 7.1. The Contract Price for the Goods and/or Services shall be as set out in the Pricing Schedule annexed marked "**PART 5: PRICING SCHEDULE**".
- 7.2. The Supplier shall not be entitled to any other consideration for the rendering of the Goods and/or Services other than as provided for in this Contract.

DETAILS OF SUPPLIER

TENDER NO: 92S/2023/24

**VOLUME 2: RETURNABLE DOCUMENTS
(3) DETAILS OF TENDERER****1.1 Type of Entity** (Please tick one box)☐ Individual / Sole Proprietor☐ Close Corporation☒ Company☐ Partnership or Joint Venture or Consortium☐ Trust☐ Other:**1.2 Required Details** (Please provide applicable details in full):

Name of Company / Close Corporation or Partnership / Joint Venture / Consortium or Individual /Sole Proprietor	
Trading as (if different from above)	
Company / Close Corporation registration number (if applicable)	
Postal address	
Physical address (Chosen domicilium citandi et executandi)	
Contact details of the person duly authorised to represent the tenderer	
Income tax number	
VAT registration number	
SARS Tax Compliance Status PIN	
City of Cape Town Supplier Database Registration Number (See Conditions of Tender)	
National Treasury Central Supplier Database registration number (See Conditions of Tender)	

Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered?	
Is tenderer a foreign based supplier for the Goods / Services / Works offered?	
Questionnaire to Bidding Foreign Suppliers	

FORM OF OFFER AND ACCEPTANCE

TENDER NO: 92S/2023/24

(4) FORM OF OFFER AND ACCEPTANCE

**TENDER NO: 92S/2023/24 – SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY
RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING**

OFFER: (TO BE FILLED IN BY TENDERER):

Required Details (Please provide applicable details in full):

Name of Tendering Entity* ("the tenderer")	Nclose (Pty) Ltd
Trading as (if different from above)	

AND WHO IS represented herein by: (full names of signatory)

duly authorised to act on behalf of the tenderer in his capacity as: (title/ designation)

HEREBY AGREES THAT by signing the *Form of Offer and Acceptance*, the tenderer:

1. confirms that it has examined the documents listed in the Index (including Schedules and Annexures) and has accepted all the Conditions of Tender;
2. confirms that it has received and incorporated any and all notices issued to tenderers issued by the CCT;
3. confirms that it has satisfied itself as to the correctness and validity of the tender offer; that the price(s) and rate(s) offered cover all the goods and/or services specified in the tender documents; that the price(s) and rate(s) cover all its obligations and accepts that any mistakes regarding price(s), rate(s) and calculations will be at its own risk;
4. offers to supply all or any of the goods and/or render all or any of the services described in the tender document to the CCT in accordance with the:
 - 4.1 terms and conditions stipulated in this tender document;
 - 4.2 specifications stipulated in this tender document; and
 - 4.3 at the prices as set out in the **Price Schedule**.
5. accepts full responsibility for the proper execution and fulfilment of all obligations and conditions

INITIALS OF CITY OFFICIALS		
1	2	3

PART 1: AGREEMENTS

TENDER NO: 092S/2023/24 – SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING

(TO BE FILLED IN BY THE CITY)

By signing this part of this form of offer and acceptance, the Purchaser identified below accepts the supplier's offer. In consideration thereof, the Purchaser shall pay the supplier the amount due in accordance with the conditions of contract. Acceptance of the supplier's offer shall form an agreement between the Purchaser and the supplier upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract are contained in:

- Clause 1 to 9, and the sub-clauses, cited in pages 1 to 4 above;
- Part 1: Agreements
- Part 2: Special Conditions to Contract
- Part 3: General Conditions of Contract
- Part 4: Specifications
- Part 5: Pricing Schedule
- Part 6: Occupational Health and Safety Agreement.
- Part 7: Contract Price Adjustment and/or Rate of Exchange Variation
- Part 8: Insurance Broker's Warranty
- Part 9: Information to be provided by the Supplier.

and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the supplier and the Purchaser during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The supplier shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Purchaser to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documents to be provided in terms of the conditions of contract identified in the special contract conditions. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on 01 July 2025 and terminate on 30 June 2031, subject to a Section 33 process. The supplier shall within five working days of the agreement coming into effect notify the purchaser in writing of any reason why he cannot accept the contents of this agreement as a complete and accurate memorandum thereof, failing which the agreement presented to the supplier shall constitute the binding contract between the parties.

**TENDER NO: 092S/2023/24 – SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED
INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING**

The Parties	Purchaser	Supplier
Business Name	CITY OF CAPE TOWN	NCLOSE (PTY) LTD
Business Registration	Not applicable	██████████
Tax number (VAT)	██████████	██████████
Physical Address	Civic Centre 12 Hertzog Boulevard Cape Town 8000	████████████████████ ████████████████ ██████████ ██████████ ██████
Accepted contract sum including tax	As Per PART 5, below	
Accepted contract duration	From 01 July 2025 and terminate on 30 June 2031	
Signed – who by signature hereto warrants authority	Chief Digital Officer: IS&T	
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of Witness		

FORM OF OFFER AND ACCEPTANCE (Continued)

TENDER NO: 092S/2023/24 – SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING

(TO BE FILLED IN BY THE CITY)

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the CCT before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A supplier's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject **NOTICE TO TENDERERS NO: 1.**

Details. **SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING**

By the duly authorised representatives signing this agreement, the CCT and the supplier agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to this tender document and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the supplier and the CCT during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the supplier of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

FINANCE
SUPPLY CHAIN MANAGEMENT

Ngoetsana Mpalami
Senior Professional Officer: Supply Chain Management

Email: NgoetsanaFrancinah.Mpalami@capetown.gov.za

20 November 2023

NOTICE TO TENDERERS NO: 1

TENDER NO: 92S/2023/24

DESCRIPTION: SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING

CLOSING DATE OF TENDER: 27 November 2023.

TENDER BOX NUMBER: 128

Dear Sir / Madam

Tenderers to note that:

The following Addendum is issued in terms of Clause 2.2.6 of the Tender Conditions

This Notice to Tenderers forms an integral part of the Contract and is an addendum which must be recorded in Schedule 13 and bound within the 'Returnable Schedules'.

Tenderers should take note of the following:

1. Page 185
Schedule B - Vulnerability Management

The following must be added under "Vulnerability Scanning core functional requirement category"

"Web application scanning; costing should be provided for 100 web applications to be scanned in total. Of these 100 web applications, 90 form part of the capetown.gov.za domain suffix."

2. Page 150, clause 38.5
Schedule C: SIEM with SOC services

Point 3 "Incident Response" is to be replaced with the following;

3.	Incident Response	Mean Time To Respond (MTTr) – Priority 1 (critical) Incidents	Less than thirty (30) minutes	5 Grief Points
		Mean Time To Respond (MTTr) – Priority 2 (high) Incidents	Less than 4 hours	5 Grief Points
		Mean Time To Respond (MTTr) – Priority 3 (medium) Incidents	Less than 8 hours	3 Grief Points
		Mean Time To Respond (MTTr) – Priority 4 (Low) Incidents	Less than 24 hours	1 Grief Points
		Mean Time To Respond (MTTr) – Priority 5 (very low) Incidents	Less than 24 hours	1 Grief Points
		Maximum Time To Restore (TTRMax) – Priority 1 & 2 Incidents	Not defined	--
		Maximum Time To Replace (TTRpMax)	Five (5) full Working Days	5 Grief Points

Ngoetsana
Mpalami

Digitally signed by Ngoetsana
Mpalami
Date: 2023.11.20 14:10:29 +02'00'

For: Director
Supply Chain Management

ACKNOWLEDGEMENT OF RECEIPT FOR AND ON BEHALF OF THE TENDERER: TENDER NO. 92S/2023/24

At on this day of 2023

Signature:

Name of Signatory:

(In ink and capitals)

TENDERER:

(Name of firm in ink and capitals)

PART 2: SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract, referring to the National Treasury – Conditions of Contract (revised July 2010), are applicable to this Contract:

1. Definitions

Delete Clause 1.15 and substitute with the following

- 1.15 The word 'Goods' is to be replaced everywhere it occurs in the GCC with the phrase 'Goods and / or Services' which means all of the equipment, machinery, materials, services, products, consumables, etc. that the supplier is required to deliver to the purchaser under the contract. This definition shall also be applicable, as the context requires, anywhere where the words "supplies" and "services" occurs in the GCC.

Delete Clause 1.19 and substitute with the following

- 1.19 The word 'Order' is to be replaced everywhere it occurs in the GCC with the words 'Purchase Order' which means the official purchase order authorised and released on the purchaser's SAP System

Delete Clause 1.21 and substitute with the following:

- 1.21 'Purchaser' means the **City of Cape Town**. The address of the Purchaser is **12 Hertzog Boulevard, Cape Town, 8001**.

Add the following after Clause 1.25:

- 1.26 'Supplier' means any provider of goods and / or services with whom the contract is concluded

1.27 "Intellectual Property" means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, copyright and rights in the nature of copyright, design rights, rights in databases, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites

3. General Obligations

Delete Clause 3.2 in its entirety and replace with the following clauses.

- 3.2 The parties will be liable to each other arising out of or in connection with any breach of the obligations detailed or implied in this contract, subject to clause 28.
- 3.3 All parties in a joint venture or consortium shall be jointly and severally liable to the purchaser in terms of this contract and shall carry individually the minimum levels of insurance stated in the contract, if any.
- 3.4 The parties shall comply with all laws, regulations and bylaws of local or other authorities having jurisdiction regarding the delivery of the goods and give all notices and pay all charges required by such authorities.
- 3.4.1 The parties agree that this contract shall also be subject to the CCT's Supply Chain Management Policy ('SCM Policy') that was applicable on the date the bid was advertised, **save that if the Employer adopts a new SCM Policy which contemplates that any clause therein**

would apply to the contract emanating from this tender, such clause shall also be applicable to that contract. Please refer to this document contained on the CCT's website.

3.4.2 Abuse of the supply chain management system is not permitted and may result in cancellation of the contract, restriction of the supplier, and/or the exercise by the City of any other remedies available to it as described in the SCM Policy.

3.5 The **supplier** shall:

3.5.1 Arrange for the documents listed below to be provided to the Purchaser prior to the issuing of the order:

- a) Proof of Insurance (Refer to Clause 11) or Insurance Broker's Warrantee
- b) Letter of good standing from the Compensation Commissioner, or a licensed compensation insurer (Refer to Clause 11)
- c) Initial delivery programme
- d) Other requirements as detailed in the tender documents

3.5.2 Only when notified of the acceptance of the bid by the issuing of the order, the supplier shall commence with and carry out the delivery of the goods in accordance with the contract, to the satisfaction, of the purchaser

3.5.3 Provide all of the necessary materials, labour, plant and equipment required for the delivery of the goods including any temporary services that may be required

3.5.4 Insure his workmen and employees against death or injury arising out of the delivery of the goods

3.5.5 Be continuously represented during the delivery of the goods by a competent representative duly authorised to execute instructions;

3.5.6 In the event of a loss resulting in a claim against the insurance policies stated in clause 11, pay the first amount (excess) as required by the insurance policy

3.5.7 Comply with all written instructions from the purchaser subject to clause 18

3.5.8 Complete and deliver the goods within the period stated in clause 10, or any extensions thereof in terms of clause 21

3.5.9 Make good at his own expense all incomplete and defective goods during the warranty period

3.5.10 Pay to the purchaser any penalty for delay as due on demand by the purchaser. The supplier hereby consents to such amounts being deducted from any payment to the supplier.

3.5.11 Comply with the provisions of the OHAS Act & all relevant regulations.

3.5.12 Comply with all laws relating to wages and conditions generally governing the employment of labour in the Cape Town area and any applicable Bargaining Council agreements.

3.5.13 Deliver the goods in accordance with the contract and with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

3.6 The **purchaser** shall:

3.6.1 Issue orders for the goods required under this Contract. No liability for payment will ensue for any work done if an official purchase order has not been issued to the supplier.

3.6.2 Make payment to the **supplier** for the goods as set out herein.

- 3.6.3 Take possession of the goods upon delivery by the supplier.
- 3.6.4 Regularly inspect the goods to establish that it is being delivered in compliance with the contract.
- 3.6.5 Give any instructions and/or explanations and/or variations to the supplier including any relevant advice to assist the supplier to understand the contract documents.
- 3.6.6 Grant or refuse any extension of time requested by the supplier to the period stated in clause 10.
- 3.6.7 Inspect the goods to determine if, in the opinion of the purchaser, it has been delivered in compliance with the contract, alternatively in such a state that it can be properly used for the purpose for which it was intended.
- 3.6.8 Brief the supplier and issue all documents, information, etc. in accordance with the contract.

5. Use of contract documents and information; inspection, copyright, confidentiality, etc.

Add the following after clause 5.4:

- 5.5 Copyright of all documents prepared by the supplier in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to contract shall be vested in the purchaser. Where copyright is vested in the supplier, the purchaser shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the contract and need not obtain the supplier's permission to copy for such use. Where copyright is vested in the purchaser, the supplier shall not be liable in any way for the use of any of the information other than as originally intended for the contract and the purchaser hereby indemnifies the supplier against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

The ownership of data and factual information collected by the supplier and paid for by the purchaser shall, after payment, vest with the purchaser

- 5.6 **Publicity and publication**
The supplier shall not release public or media statements or publish material related to the services or contract within two (2) years of completion of the services without the written approval of the purchaser, which approval shall not be unreasonably withheld.
- 5.7 **Confidentiality**
Both parties shall keep all information obtained by them in the context of the contract confidential and shall not divulge it without the written approval of the other party.

5.8 Intellectual Property

- 5.8.1 The supplier acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the Employer.
- 5.8.2 The supplier hereby assigns to the Employer, all Intellectual Property created, developed or otherwise brought into existence by it for the purposes of the contract, unless the Parties expressly agree otherwise in writing.
- 5.8.3 The supplier shall, and warrants that it shall:
 - 5.8.3.1 not be entitled to use the Employer's Intellectual Property for any purpose other than as contemplated in this contract;

5.8.3.2 not modify, add to, change or alter the Employer's Intellectual Property, or any information or data related thereto, nor may the supplier produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the Employer;

5.8.3.3 not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the Employer;

5.8.3.4 comply with all reasonable directions or instructions given to it by the Employer in relation to the form and manner of use of the Employer Intellectual Property, including without limitation, any brand guidelines which the Employer may provide to the supplier from time to time;

5.8.3.5 procure that its employees, directors, members and contractors comply strictly with the provisions of clauses 5.8.3.1 to 5.8.3.3 above;

unless the Employer expressly agrees thereto in writing after obtaining due internal authority.

5.8.4 The supplier represents and warrants to the Employer that, in providing goods, services or both, as the case may be, for the duration of the contract, it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the Employer from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the supplier of any third party's Intellectual Property rights.

5.8.5 In the event that the contract is cancelled, terminated, ended or is declared void, any and all of the Employer's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Employer by the supplier and no copies thereof shall be retained by the supplier unless the Employer expressly and in writing, after obtaining due internal authority, agrees otherwise.

7. Performance Security

Not Applicable . Tenderers must disregard **Form of Guarantee / Performance Security** and are not required to complete same.

8. Inspections, tests and analyses

Delete Clause 8.2 and substitute with the following:

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 purchaser or an organisation acting on behalf of the purchaser.

10. Delivery and documents

Delete clauses 10.1 and 10.2 and replace with the following:

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The time for delivery of the goods shall be the date as stated on the order. Orders for the supply and delivery of goods may be raised up until the expiry of a framework agreement bid, provided that the goods can be delivered within 30 days of expiry of the framework contract. All orders, other than for the supply and delivery of goods, must be completed prior to the expiry of the contract period.

10.2 The purchaser shall determine, in its sole discretion, whether the goods have been delivered in compliance with the contract, alternatively in such a state that it can be properly used for the purpose for which it was intended. When the purchaser determines that the goods have been satisfactorily delivered, the purchaser must issue an appropriate certification, or written approval, to that effect. Invoicing may only occur, and must be dated, on or after the date of

acceptance of the goods.

11. Insurance

Add the following after clause 11.1:

11.2 Without limiting the obligations of the supplier in terms of this contract, the supplier shall effect and maintain the following additional insurances:

- a) Public liability insurances, in the name of the supplier, covering the supplier and the purchaser against liability for the death of or injury to any person, or loss of or damage to any property, arising out of or in the course of this Contract, in an amount not less than **R20 million** for any single claim;
- b) Motor Vehicle Liability Insurance, in respect of all vehicles owned and / or leased by the supplier, comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity;
- c) Registration / insurance in terms of the Compensation for Occupational Injuries and Disease Act, Act 130 of 1993. This can either take the form of a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the bidder's broker or the insurance company itself (see **Proof of Insurance / Insurance Broker's Warranty** section in document for a pro forma version).
- d) Professional indemnity insurance providing cover in an amount of not less than R5 million in respect of each and every claim during the contract period.

In the event of under insurance or the insurer's repudiation of any claim for whatever reason, the CCT will retain its right of recourse against the supplier.

11.3 The supplier shall be obliged to furnish the CCT with proof of such insurance as the CCT may require from time to time for the duration of this Contract. Evidence that the insurances have been effected in terms of this clause, shall be either in the form of an insurance broker's warranty worded precisely as per the pro forma version contained in the **Proof of Insurance / Insurance Broker's Warranty** section of the document or copies of the insurance policies.

15. Warranty

Add to Clause 15.2:

15.2 This warranty for this contract shall remain valid for **six (6) months** after the goods have been delivered.

16. Payment

Delete Clause 16.1 in its entirety and replace with the following:

16.1 Payment of invoices will be made within 30 days of receiving the relevant invoice or statement, unless otherwise prescribed for certain categories of expenditure or specific contractual requirements in accordance with any other applicable policies of the City. All completed invoices for goods and services will be paid on a weekly basis and construction related invoices will be paid daily.

Notwithstanding anything contained above, the City shall not be liable for payment of any invoice that pre dates the date of delivery of any goods or services, or the date of certification for construction works.

Should the processing of a payment be delayed due to the late submission of documentation,

any penalties imposed will be for the account of the functional business area. Any queries will also be referred to such line department.

No official shall commit Council to making a payment outside the scheduled payment terms

Delete Clause 16.2 in its entirety and replace with the following:

- 16.2 The supplier shall furnish the purchaser's Accounts Payable Department with an original tax invoice, clearly showing the amount due in respect of each and every claim for payment.

Add the following after clause 16.4

- 16.5 Notwithstanding any amount stated on the order, the supplier shall only be entitled to payment for goods actually delivered in terms of the Project Specification and Drawings, or any variations in accordance with clause 18. Any contingency sum included shall be for the sole use, and at the discretion, of the purchaser.

The CCT is not liable for payment of any invoice that pre-dates the date of delivery of the goods.

- 16.6 The purchaser will only make advanced payments to the supplier in strict compliance with the terms and details as contained on **Proforma Advanced Payment Guarantee** and only once the authenticity of such guarantee has been verified by the City's Treasury Department.

17. Prices

Add the following after clause 17.1

- 17.2 If as a result of an award of a contract beyond the original tender validity period, the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then the contract may be subject to contract price adjustment for that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Director: Supply Chain Management if such was not included in the bid documents.

- 17.3 If as a result of any extension of time granted the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then contract price adjustment may apply to that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Director: Supply Chain Management if such was not included in the bid documents.

- 17.4 The prices for the goods delivered and services performed shall be subject to contract price adjustment and the following conditions will be applicable:

Not applicable to this contract

- 17.5 If price adjustment for variations in the cost of plant and materials imported from outside of South Africa is provided for in the contract, such adjustment shall be based on the information contained on the schedule titled "**Price Basis for Imported Resources**" and as below. For the purposes of this clause the Rand value of imported Plant and Materials inserted on the schedule titled "**Price Basis for Imported Resources**" (column (F)) shall be the value in foreign currency (column (A)) converted to South African Rand (column (C)) by using the closing spot selling rate quoted by **CCT's** main banker, NEDBANK, on the Base Date (seven calendar days before tender closing date) rounded to the second decimal place (column(B)), to which shall be added any Customs Surcharge and Customs Duty applicable at that date (columns (D) and (E)).

- 17.5.1 Adjustment for variations in rates of exchange:

(a) The value in foreign currency inserted in column (A) shall be subject to clause (h) below when recalculating the Rand value.

(b) The rate of exchange inserted in column (B) shall be the closing spot selling rate quoted by Council's main banker, NEDBANK, on the Base Date, rounded to the second decimal place, subject to sub-paragraph (c) below.

(c) If the rate of exchange inserted by the Tenderer differs from the NEDBANK rate referred to above, then the NEDBANK rate shall apply and the Rand value in columns (C) and (F) shall be recalculated accordingly, without altering the price in the Price Schedule for the relevant items.

(d) If a tender from a supplier or sub-contractor provides for variations in rates of exchange, the Supplier may **only** claim for variations in rates of exchange if he binds the supplier or sub-contractor to the same provision to take out forward cover as described in sub-paragraph (e) below.

(e) The Supplier (or sub-contractor) shall within five working days from the date of placing a firm order on an overseas supplier, cover or recover forward by way of a contract with a bank which is an authorised foreign exchange dealer, the foreign exchange component of the cost of any imported Plant and Materials inserted by the Tenderer on the schedule titled "**Price Basis for Imported Resources**".

(f) When the Supplier (or sub-contractor) so obtains forward cover, the Supplier shall immediately notify the CCT of the rate obtained and furnish the CCT with a copy of the foreign exchange contract note.

(g) Based on the evidence provided in sub-paragraph (f) above, the value in Rand inserted in column (C) of on the schedule titled "**Price Basis for Imported Resources**" shall be recalculated using the forward cover rate obtained, and any increase or decrease in the Rand value defined in this clause shall be adjusted accordingly, subject to sub-paragraph (h) below.

(h) The adjustments shall be calculated upon the value in foreign currency in the Supplier's (or sub-contractor's) **forward cover contract**, provided that, should this value exceed the value in foreign currency inserted in column (A) of on the schedule titled "**Price Basis for Imported Resources**", then the value in column (A) shall be used.

17.5.2 Adjustment for variations in customs surcharge and customs duty

(a) Any increase or decrease in the Rand value between the amounts of Customs Surcharge and Customs Duty inserted in on the schedule titled "**Price Basis for Imported Resources**" and those amounts actually paid to the Customs and Excise Authorities, which are due to changes in the percentage rates applicable or to the foreign exchange rate used by the authorities, shall be adjusted accordingly.

(b) The Tenderer shall state the Customs Duty Tariff Reference applicable to each item and the Supplier shall advise the CCT's Agent of any changes which occur.

17.5.3 Adjustment for variation in labour and material Costs

If the prices for imported Plant and Materials are not fixed, the Supplier shall in his Tender specify the formula for calculating Contract Price Adjustments normally used in the country of manufacture and the indices and relative proportions of labour and material on which his Tender prices are based. Evidence of the indices applicable shall be provided with each claim. The indices applicable 42 days before contractual dispatch date from the factory will be used for the purposes of Contract Price Adjustment.

Failure to specify a formula in the Tender shall mean that the prices are fixed or shall be deemed to be fixed.

18. Contract Amendments

Delete the heading of clause 18 and replace with the following:

18. Contract Amendments and Variations

Add the following to clause 18.1:

Variations means changes to the goods, extension of the duration or expansion of the value of the contract that the purchaser issues to the supplier as instructions in writing, subject to prior approval by the purchaser's delegated authority. Should the supplier deliver any goods not described in a written instruction from the purchaser, such work will not become due and payable until amended order has been issued by the purchaser.

20. Subcontracts

Add the following after clause 20.1:

- 20.2 The supplier shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the supplier.
- 20.3 Any appointment of a subcontractor shall not amount to a contract between the CCT and the subcontractor, or a responsibility or liability on the part of the CCT to the subcontractor and shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

Delete Clause 21.2 in its entirety and replace with the following:

- 21.2 If at any time during the performance of the contract the supplier or its sub-contractors should encounter conditions beyond their reasonable control which impede the timely delivery of the goods, the supplier shall notify the purchaser in writing, within 7 Days of first having become aware of these conditions, of the facts of the delay, its cause(s) and its probable duration. As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation, and may at his discretion extend the time for delivery.

Where additional time is granted, the purchaser shall also determine whether or not the supplier is entitled to payment for additional costs in respect thereof. The principle to be applied in this regard is that where the purchaser or any of its agents are responsible for the delay, reasonable costs shall be paid. In respect of delays that were beyond the reasonable control of both the supplier and the purchaser, additional time only (no costs) will be granted.

The purchaser shall notify the supplier in writing of his decision(s) in the above regard.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of goods from a national department, provincial department, or a local authority.

22. Penalties

Delete clause 22.1 and replace with the following:

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods 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 as stated herein for each day of the delay until actual delivery or performance.

The penalty for this contract shall be as reflected in SCC below in section 41.

- 22.2 The purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, financial penalties as contained on the **Preference Schedule** relating to breaches of the conditions upon which preference points were awarded.

23. Termination for default

Delete the heading of clause 23 and replace with the following:

23. Termination

Add the following to the end of clause 23.1:

if the supplier fails to remedy the breach in terms of such notice

Add the following after clause 23.7:

23.8 In addition to the grounds for termination due to default by the supplier, the contract may also be terminated:

23.8.1 Upon the death of the supplier who was a Sole Proprietor, or a sole member of a Close Corporation, in which case the contract will terminate forthwith.

23.8.2 The parties by mutual agreement terminate the contract.

23.8.3 If an Order has been issued incorrectly, or to the incorrect recipient, the resulting contract may be terminated by the purchaser by written notice

23.8.4 If a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the City Manager follows the processes as described in the purchasers SCM Policy.

23.8.5 After providing notice to the supplier, if the implementation of the contract may result in reputational risk or harm to the City as a result of (inter alia):

23.8.5.1 reports of poor governance and/or unethical behaviour;

23.8.5.2 association with known family of notorious individuals;

23.8.5.3 poor performance issues, known to the Employer;

23.8.5.4 negative social media reports; or

23.8.5.5 adverse assurance (e.g. due diligence) report outcomes..

23.9 If the contract is terminated in terms of clause 23.8, all obligations that were due and enforceable prior to the date of the termination must be performed by the relevant party.

26. Termination for insolvency

Delete clause 26.1 and replace with the following:

26.1 The purchaser may make either of the following elections to ensure its rights are protected and any negative impact on service delivery is mitigated:

26.1.1 accept a supplier proposal (via the liquidator) to render delivery utilising the appropriate contractual mechanisms; or

26.1.2 terminate the contract, as the liquidator proposed supplier is deemed unacceptable to the purchaser, at any time by giving written notice to the supplier (via the liquidator).

26.2 Termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

Amend clause 27.1 as follows:

- 27.1 If any dispute or difference of any kind whatsoever, with the exception of termination in terms of clause 23.1 (c), arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.

Delete Clause 27.2 in its entirety and replace with the following:

- 27.2 Should the parties fail to resolve any dispute by way of mutual consultation, either party shall be entitled to refer the matter for mediation before an independent and impartial person appointed by the City Manager in accordance with Regulation 50(1) of the Local Government: Municipal Finance Management Act, 56 of 2003 – Municipal Supply Chain Management Regulations (Notice 868 of 2005). Such referral shall be done by either party giving written notice to the other of its intention to commence with mediation. No mediation may be commenced unless such notice is given to the other party.

Irrespective whether the mediation resolves the dispute, the parties shall bear their own costs concerning the mediation and share the costs of the mediator and related costs equally.

The mediator shall agree the procedures, representation and dates for the mediation process with the parties. The mediator may meet the parties together or individually to enable a settlement.

Where the parties reach settlement of the dispute or any part thereof, the mediator shall record such agreement and on signing thereof by the parties the agreement shall be final and binding.

Save for reference to any portion of any settlement or decision which has been agreed to be final and binding on the parties, no reference shall be made by or on behalf of either party in any subsequent court proceedings, to any outcome of an amicable settlement by mutual consultation, or the fact that any particular evidence was given, or to any submission, statement or admission made in the course of amicable settlement by mutual consultation or mediation.

28. Limitation of Liability

Delete clause 28.1 (b) and replace with the following:

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the sums insured in terms of clause 11 in respect of insurable events, or where no such amounts are stated, to an amount equal to twice the contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

Add the following after clause 28.1:

- 28.2 Without detracting from, and in addition to, any of the other indemnities in this contract, the supplier shall be solely liable for and hereby indemnifies and holds harmless the purchaser against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with:

- a) personal injury or loss of life to any individual;
- b) loss of or damage to property;

arising from, out of, or in connection with the performance by the supplier in terms of this Contract, save to the extent caused by the gross negligence or wilful misconduct of the purchaser.

- 28.3 The supplier and/or its employees, agents, concessionaires, suppliers, sub-contractors or customers shall not have any claim of any nature against the purchaser for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether or not such loss, damages, injury or death is caused through negligence of the purchaser or its agents or employees.
- 28.4 Notwithstanding anything to the contrary contained in this Contract, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall any party or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever, whether or not the loss was actually foreseen or reasonably foreseeable), sustained by the other party, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.
- 28.5 Each party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amounts payable.

31. Notices

Delete clauses 31.1 and 31.2 and replace with the following:

- 31.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses specified in the contract and may be given as set out hereunder and shall be deemed to have been received when:
- a) hand delivered – on the working day of delivery
 - b) sent by registered mail – five (5) working days after mailing
 - c) sent by email or telefax – one (1) working day after transmission

32. Taxes and Duties

Delete the final sentence of 32.3 and replace with the following:

In this regard, it is the responsibility of the supplier to submit documentary evidence in the form of a valid Tax Clearance Certificate issued by SARS to the CCT at the Supplier Management Unit located within the Supplier Management / Registration Office, 2nd Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5).

Add the following after clause 32.3:

32.4 The **VAT registration** number of the City of Cape Town is [REDACTED]

ADDITIONAL CONDITIONS OF CONTRACT

Add the following Clause after Clause 34:

35. Reporting Obligations

35.1 The supplier shall complete, sign and submit with each delivery note, all the documents as required in the Specifications. Any failure in this regard may result in a delay in the processing of any payments.

37. Contract Performance Criteria

37.1 The supplier shall adhere to the below Service Level Framework:

37.2 Roles and Responsibilities

The Supplier

Party	Functional Role	Service Responsibility
Service Provider	Maintain guaranteed service levels and service assurance	Logging and tracking of contractual incidents for all problems from receipt of issue from City to resolution.
Service Provider	Performance Management Report	Monthly reports to the City
Service Provider	Contractual Incident Report	Monthly reports to the City
Service Provider	Supply and delivery of goods	Supply and deliver of equipment within a period of six weeks from date of purchase order received from City
Service Provider	SLA measurement	Calculation of any Service Credits if due
Service Provider	Adherence to all change control, maintenance and emergency procedures	Communication with City contacts only
Service Provider	Support and maintenance	Provide support and maintenance services from receipt of logged call from City This includes managing escalation procedures to the vendor support centre
Service Provider	Solution Design	Drafting of solution designs, scenarios and associated quotations in order to meet the information security requirements of the City

City of Cape Town

Party	Functional Role	Service Responsibility
City of Cape Town IS & T department	Request for solutions	Clearly defined requirements
City of Cape Town IS & T department	Generate purchase order	Supply orders with official City order number, delivery address and contact person
City of Cape Town IS & T department	Taking receipt of goods, and support and maintenance certificates	Sign Invoices or delivery notes on delivery of orders
City of Cape Town IS & T department	Fault notification	Log support calls with supplier with relevant details
City of Cape Town IS & T department	SLA measurement	Measure and /or audit the measurement of delivery schedule, arrange Goods Receipt Note (GRN)

Line departments other than IS&T

1. Request quotes from IS&T
2. Raise Purchase Requisition

3. Release Purchase Requisition on SAP
4. On delivery of ordered equipment, sign the Receipt or Delivery note
5. GRN the Purchase Order

37.3 Scope

37.3.1 In-Scope

- Quotations
- Solution design and proposals
- Supply and delivery of services, licenses, goods, and support and maintenance certificates
- Support and maintenance processes with supplier

37.3.2 Out-of-Scope

- Informal telephonic queries

37.4 Description of Services:

- Quotations
- Licensing
- Support and maintenance
- Log calls with vendor
- Management of vendor processes on behalf of the City

Types of equipment:

- Appliances - various
- Servers
- On premise
- Cloud

Refer to Pricing Schedules within the tender document, regarding the SLA costs to be provided in order to meet the terms and conditions of the Service Level Agreement measurements as per Schedules listed below.

38 SERVICE LEVEL MEASUREMENTS

- 38.1 The provision of each Service will be measured by comparing the level at which the actual Services are provided against the level at which the parties agreed that the Services will be provided as set out below;

38.2 The method that the parties will use to make this comparison is set out below:

38.3 Schedule C: SIEM with SOC services

#	Service Element	Service Measure	Service Metric	Grief Points incurred for non-performance
1.	Device Availability	Uptime of each individual logging unit or appliance	Better than or equal to 99% over the period of each Calendar month	10 Grief Points
2.	Service Availability	Uptime of the IT Security Intelligence Platform	Better than or equal to 99.9% over the period of each Calendar month	15 Grief Points
3.	Incident Response	Mean Time To Respond (MTTr) – Priority 1 (critical) Incidents	Less than thirty (30) minutes	5 Grief Points
		Mean Time To Respond (MTTr) – Priority 2 (high) Incidents	Less than 4 hours	5 Grief Points
		Mean Time To Respond (MTTr) – Priority 3 (medium) Incidents	Less than 8 hours	3 Grief Points
		Mean Time To Respond (MTTr) – Priority 4 (Low) Incidents	Less than 24 hours	1 Grief Points
		Mean Time To Respond (MTTr) – Priority 5 (very low) Incidents	Less than 24 hours	1 Grief Points
		Maximum Time To Restore (TTRMax) – Priority 1 & 2 Incidents	Not defined	--
		Maximum Time To Replace (TTRpMax)	Five (5) full Working Days	5 Grief Points

#	Service Element	Service Measure	Service Metric	Grief Points incurred for non-performance
4.	Provide Maintenance and Technical Support	Technical support services available as specified	Remediate configuration issues within three (3) full Working Days	5 Grief Points
		Train City staff on the functionality of the platform sufficient to ensure service continuity	Eight (8) full Working Hours per Calendar Month, as evidenced by signed job card	2 Grief Points
5.	Provide and maintain Contact Information	Provide and maintain contact details	Provided (yes/no) Assessed monthly by random check	2 Grief Points
		Key Contact Person responds timeously	Not defined	--
6.	Adhere to procurement, ordering, delivery and payment process	Responses to requests for Design Proposals as required	Design Proposals provides within ten (10) full Working Days (yes / no)	2 Grief Points
		Responses to requests for Quotations provided as required	Quotations provided within seven (7) full Working Days (yes / no)	1 Grief Point
		Equipment Delivery process followed as specified	Specified items delivered – not defined	--
			Packaging as specified – not defined	--
			Labelling as specified – not defined	--
			Delivery within quoted lead time – not defined	--
			Delivery at the place specified in the Purchase Order – not defined	--
		Fault handling process followed	As specified – not defined	--

#	Service Element	Service Measure	Service Metric	Grief Points incurred for non-performance
		Repair or replacement process followed	As specified – not defined	--
7.	Report to the City	Provide monthly Summary Report as specified Include record of all Incidents and consequent resolutions, plus root cause when requested	Provided within seven (7) Calendar Days after the last day of each month (yes/no) Assessed monthly	2 Grief Points
		Include details of outstanding security updates, software updates, and any related recommendations		1 Grief Point
8.	Attend Service Review Meetings	Physical attendance at the Service Review Meeting of the Key Contact Person	Present as per attendance register (yes/no) Assessed per meeting as evidenced by Attendance Register	2 Grief Points

39 FREQUENCY FOR REPORTING COMPLIANCE OF THE SERVICE LEVEL

The Measurement Period will be daily and the Reporting Period will be monthly. Information, such as grief points, termination events and performance statistics against service levels, will be consolidated in the form of a Report and presented at the scheduled monthly meetings. Meetings to be scheduled post award with successful bidder. The supplier will compile a monthly report and deliver the report to the City of Cape Town authorised representative two days prior to the scheduled meeting date.

Communication to be done by the City's delegated Information Technology Manager and authorised representatives from _____ (Company).

40 SERVICE PENALTY

40.1 In each case of a failure to satisfy a Service Level, the Supplier will satisfy the applicable Service Level within seven days from date of notification of service level failure.

40.2 In addition, in each case that a Service Level is not complied with, the City shall be

entitled (but not obliged) to recover a Service Penalty, calculated in the manner described in the Service Penalty Calculation Section.

41 SERVICE PENALTY CALCULATION

- 41.1 Each Service Penalty is made up of an accumulation of Grief Points.
- 41.2 Grief Points are accumulated automatically by the City due to failures by the Supplier to meet Service Levels.
- 41.3 Grief points shall be allocated for each failure to meet any Service Levels in each calendar month.
- 41.4 Each block of 15 (fifteen) or more Grief Points that is accumulated by the City in each month will constitute a Service Penalty, which may be claimed by the City. Consistently high monthly Grief Points over several months will be reviewed and consideration given to this constituting a Service Level Terminal Event.
- 41.5 Before every monthly SLA meeting the Supplier will generate a report with all the details of the non-compliance of the service levels and the grief points that the City is entitled.
- 41.6 The City may claim a Service Penalty by informing the Supplier at the SLA meeting or in writing that it is claiming the Service Penalty.
- 41.7 On the first accumulation of a Service Penalty, the penalty which may be claimed will be 5% (five percent) of the Order or Service Fee affected that the City must pay the Supplier in terms of this agreement for the month in which the Grief Points were incurred.
- 41.8 The penalty will be claimed as a discount in following month's account.
- 41.9 A 12-month rolling period will commence on the first (1st) day of each month. A 12-month rolling period is defined as the current month and the previous 11 months.
- 41.10 At the second accumulation of a Service Penalty in any 12-month rolling period, the penalty that may be claimed will be 10% (ten percent) of the Order or Service Fee affected for the month in which the Grief Points were incurred.
- 41.11 On the third and subsequent occurrence of a Service Penalty in any rolling 12-month period, the penalty that may be claimed will be 15% (fifteen percent) of the Order or Service Fee affected for the month in which the Grief Points were incurred and may constitute a Service Level Termination Event.

42 TERMINATION – GENERAL EVENTS

- 42.1 Termination for default: See clause 23 of the GCC
- 42.2 Termination for insolvency: See clause 26 of the GCC

43 NOTICES

- 43.1 All notices given by any party to any other hereunder shall be given in writing and shall be sent by prepaid registered post, or shall be delivered by hand, to the

recipient's *domicilium* for the time being.

- 43.2 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to him notwithstanding that it was not sent nor delivered to the recipient's chosen *domicilium*.

44 **DOMICILIA CITANDI ET EXECUTANDI ADDRESSES**

- 44.1 For all purposes of, and arising in connection with, this Agreement the parties choose as their respective *domicilia citandi et executandi* addresses the above addresses.
- 44.2 Any party may from time to time change its address for the purpose of this clause to any other address within South Africa upon not less than 10 (ten) days' notice given to the other party to such effect.

45 **GENERAL**

- 45.1 This Agreement and the related tender sets out the entire agreement and understanding between the parties in connection with the subject matter hereof and supercedes all prior agreements, if any, between them.
- 45.2 None of the parties shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 45.3 No addition to, variation or consensual cancellation of this Agreement, shall be of any force or effect unless in writing and signed by or on behalf of all parties.
- 45.4 No indulgence which any party may grant to the any other shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which might have arisen in the past or which might arise in the future.
- 45.5 All parties acknowledges that, in entering into this Agreement, they are not relying upon any warranties, representations or undertakings howsoever or to whomsoever made, save and except in so far as same are embodied in this Agreement.
- 45.6 This Agreement is read together with the General Conditions of Contract and the Special Conditions of Contract as contained in the Tender Document.

46 **APPLICABLE LAW**

This Agreement shall in all respects be construed in accordance with, and shall be governed by, South African law.

PART 3: GENERAL CONDITIONS OF CONTRACT

(National Treasury - General Conditions of Contract (revised July 2010))

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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 or her 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 in which an enterprise abroad is subsidised 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 recognised 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 with 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 consignee's 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 markets its goods on its own initiative in the RSA at lower prices than that of the country of origin, and which action has the potential to harm the local industries in the RSA.
- 1.12 'Force majeure' means an event beyond the control of the supplier, not involving the supplier's fault or negligence, and not foreseeable. Such events may include, but are 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 organisation purchasing the goods.
- 1.22 'Republic' means the Republic of South Africa.
- 1.23 'SCC' means the Special Conditions of Contract.
- 1.24 'Services' means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance, and other such obligations of the supplier covered under the contract.
- 1.25 'Written' or 'in writing' means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable, a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za.

4. Standards

- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1, except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself, mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from the use of the goods or any part thereof by the purchaser.

7. Performance Security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organisation acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention of such 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 analysed 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 the 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 the 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 the SCC.
- 10.2 Documents to be submitted by the supplier are specified in the SCC.

11. Insurance

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

12. Transportation

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

13. Incidental Services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services (if any) specified in the SCC:
- (a) performance or supervision of on-site assembly, and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for the assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

- 14.1 As specified in the SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications), or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for 12 (twelve) 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 18 (eighteen) 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 the SCC.
- 15.3 The purchaser shall notify the supplier promptly, in writing, of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in the 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 the 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 the SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of any other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than 30 (thirty) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in the 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 tendered by the supplier in his bid, with the exception of any price adjustments authorized in the SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract Amendments

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

19. Assignment

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

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract 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 the 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 or her 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 of supplies; or to have minor essential services executed if an emergency arises, or 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 cancelling 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 14 (fourteen) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated 14 (fourteen) 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 5 (five) 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, Act 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 of not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction, and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidised 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 or she 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 or her.

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 notify the purchaser promptly, in writing, of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.

27.2 If, after 30 (thirty) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
(a) the parties shall continue to perform their respective obligations under the contract unless

- they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due to the supplier.

28. Limitation of Liability

- 28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6:
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
 - (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable Law

- 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in the SCC.

31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail, and any other notice to him shall be posted by ordinary mail, to the address furnished in his bid or to the address notified later by him in writing; and such posting shall be deemed to be proper service of such notice.
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and Duties

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, licence 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, Act 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, Act 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 10 (ten) years and/or claim damages from the bidder(s) or contractor(s) concerned.

PART 4: SPECIFICATIONS

13.1 TRADE NAMES OR PROPRIETARY PRODUCTS

TENDERERS MUST NOTE THAT WHEREVER THIS DOCUMENT REFERS TO ANY PARTICULAR TRADE MARK, NAME, PATENT, DESIGN, TYPE, SPECIFIC ORIGIN OR PRODUCER, SUCH REFERENCE SHALL BE DEEMED TO BE ACCOMPANIED BY THE WORDS 'OR EQUIVALENT'

Schedule C - SIEM with SOC services

The City has identified the need to improve the City's incident management and response processes in order to protect the City's information and maintain confidentiality, integrity and availability of all citizen and related data.

The City has an existing investment in an on premise SIEM solution that provides real-time event processing and correlation of security events. The current environment has been sized for 15426 events per second, with receivers, logging devices, enterprise security managers in a high availability configuration. The current environment is end of life in June 2025.

The preference is for a service provider to provide a co-managed service together with the City's Security Operations Centre. However, the City retains the right to choose between an on-premise SIEM or service provider hosted SIEM.

Please note that the City has selected Microsoft 365 E5 licensing in order to deliver on the City's Productivity solution requirements. This also includes Azure Active Directory. This licensing provides access to the Microsoft SIEM solution for Microsoft based security products.

The SIEM solution should integrate with the new technologies related to the City's CAR program, some examples are:

- Productivity - Microsoft 365
- Identity Life Cycle management solution
- API integration Solution
- Future Cloud Applications

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
Ease of use	Provide a UX that assumes a high level of security monitoring maturity, with workflows and operational models that are efficient Includes roles and access control, dashboard and reporting features and functionality, and flexibility to add and customize these features, as required by the users and administrators.		
Architecture and Deployment	- Integrate with the City's existing ICT infrastructure and application environments considering the City's Two Data Centre strategy. - Future integration with Cloud applications yet to be selected including ITSM, CRM, HCM, SCM		
Data Sources	- Events are processed and correlated in real-time across from multiple sources in order to provide relevant contextual information - How events are analysed and categorized over a short to long term basis in order to identify threats and attacks - Palo Alto Panorama management console - Microsoft Active Directory - Microsoft Active Directory DNS - Microsoft Windows Event Forwarding (WEF) - Microsoft Defender - Microsoft Defender for Cloud Apps - Microsoft Purview DLP - Extreme Networks switches - Citrix ADCs - Microsoft SQL databases - Oracle databases - Apache web servers - AIX - SUSE Linux Enterprise Server - Red Hat Enterprise Linux - CentOS - Oracle Linux - Rocky Linux - Tenable.SC Vulnerability		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	Manager Tenable.IO		
Content	- The mapping of data, techniques and incidents to the MITRE ATT&CK framework. - Operating system information or events will be ingested and processed through the IT SIEM - Network traffic from the Internet can be analysed to detect malicious traffic to City website and internal services. - The solution must perform profiling in order to identify potential risks from users, devices and data - Collect and analyse data in order to identify malicious behavior, ensure compliance, generate reports, and effectively respond to identified issues. - Subscribe to Threats feeds and various security Content packs - User and Entity Behavior Analytics (UEBA), as a built-in feature of the SIEM solution or add-on - Regular and real-time analytics - Creation and maintenance of investigation and response playbooks, senior-executive-level, risk-based dashboards and support for threat-hunting processes.		
Log Management	- Network traffic within the City's Data Centre's must be analysed to detect malicious traffic - Live (hot) log retention period of a minimum of 12 months - Antivirus information or events be ingested and processed through the SIEM - All firewall and IPS information or events to be ingested and processed through the SIEM - All switching and routing		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	formation or events to be ingested and processed through the SIEM • Active Directory, Azure AD, ILM-Idp,SAML,SSO information or events will be ingested and processed through the IT SIEM • SCOM information or events will be ingested and processed through the SIEM • All Windows Event Forwarding (WEF) for Windows servers and clients and will be ingested and processed through the SIEM • All SAP information or events to be ingested and processed through the SIEM • All databases information or events will be ingested and processed through the SIEM • All proxy server information or events will be ingested and processed through the SIEM • The SIEM solution to integrate with the City's Data Loss Prevention solutions		
Cloud Applications- CASB	• The SIEM solution to integrate with the current and proposed CASB solutions including the ability to cater for the future Cloud product expansion and advanced features • The SIEM solution to integrate with the Microsoft Defender XDR solution • The SIEM solution to integrate with the City's Microsoft Data Loss Prevention solution		
Compatibility	• Offer rich, robust sets of integrations, connectors, parsers and even additional content, such as analytics and/or response capabilities.		
Integration	• Ability to work bidirectionally with third-party toolsets, both security- and nonsecurity-focused. • Ability to integrate, as well as send and retrieve information from such systems, and track and manage the status of workflows in such systems		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	- Support data capture and analysis from heterogeneous, third-party sources (i.e., sources other than the SIEM vendor's own products and SaaS). These include market-leading network technologies, endpoints, servers, and cloud (infrastructure as a service [IaaS] or SaaS) and business applications. - SIEM agent coexistence with SCOM agent on the same server		
Use Cases	- Out-of-the-Box Use Cases - cases for threat-monitoring (e.g., ransomware and business email compromise), compliance (such as PCI DSS, HIPAA, and POPIA), and specific best practices or frameworks (e.g., NIST Cybersecurity Framework, CIS standards and ISO 27001). - Customizable Use Cases - to support environments with challenges, such as distributed geographies and multiple/hybrid environments for data collection from customized sources, high volumes and API integration requirements. - Threat Detection, Investigation and Response - integrated, bidirectional, communications driven approach to complementary security operations capabilities (e.g., EDR, NDR, UEBA, SOAR and XDR) and require a platform that can act as a "workbench" for security operations which include the design and implementation of new analytical or rule-based detection capabilities, provide investigational tools for managing threat hunting, red team versus blue team exercises, and integrated response capabilities to enable immediate threat		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	mitigation from the security operations team. Honeypot services with threat detection		
SOC	- Monitoring and Alerting of threats and vulnerabilities - incident response and recovery (triage) - Threat Hunting - Mitigating threats and vulnerabilities, Security and virtual patching. - Threat intelligence including context per alert - Provide remediation plans - Compliance management and data protection - Produce management and operational reports. - Provide monthly health status reports - Manage and modify existing use cases and creating of new use cases as needed. - Complete regular SOC audits. 24x7x365 service and support - Create and mature playbooks and run books - Red, Blue, Purple team simulations on request. - Analyse indicators of compromise, and generate actionable insights for faster and more effective incident resolution. - Lessons learnt from previous on boarding of clients and new implementations - On demand reporting from live data for continuous improvement.		
SOAR	- User-friendly interface for creating and managing automated workflows and playbooks. - Capabilities to streamline and automate incident response processes. - Integrate with all standard security technologies. - automate manual and repetitive security tasks - automate incident response actions, enrichment of		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	security data, threat hunting, and other routine processes. • Improve overall security posture of the City of Cape Town • Incident response • facilitates incident response by providing a unified interface for security analysts to investigate, triage, and respond to security incidents • Analyse indicators of compromise, and generate actionable insights for faster and more effective incident resolution. • Case Management: provide a consolidated view of ongoing investigations, notes, and communication • integrate with external threat intelligence feeds • proper documentation of security incidents. • Reporting and Metrics: generate metrics, dashboards, and reports that track incident response times, automation efficiencies, and overall security posture, providing insights for continuous improvement.		
Professional Services	▪ Assess SIEM environment to identify existing gaps and provide recommendations. ▪ Threat intelligence ▪ Provide remediation plans ▪ Compliance management and data protection ▪ Produce management and operational reports. ▪ Provide monthly health status reports ▪ Manage and modify existing use cases and creating of new use cases as needed. ▪ Create and mature playbooks and runbooks • Red, Blue, Purple team simulations on request. • Provide services of a lead auditor for ISO 27001		
MSSP	• Refer to SIEM, SOC, Professional services and		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
	SOAR categories above		
SIEM as a Service	- Log Management with 12 months Live Log Retention - Platform Administration - Daily Health Check Reporting - Activeboards (Real-Time Dashboards) - Collaboration Integrations - SecOps DFIR Triaging - SecOps DFIR Entity Analytics - Compliance Use Cases		
SOC as a Service	- Basic service to Enterprise level 8x5 SLA based Detect & Notify 24x7x365 SLA based Detect & Notify - Active Threat Hunting and Advisory - Threat Intelligence Management - Incident Response Management - Daily Threat Benchmark Reporting - Weekly SLA Benchmark Reporting - Monthly Executive Reporting - Compliance Reporting		
SOAR as a Service	- integrations - content packs - Workflow automations for active response - Security-focused automated case management - Threat intelligence management - Network security automation - Machine-Learning based playbooks - Scheduled reporting - consolidated dashboards for Incidents, SLA and collaboration - Use Case Development and Implementation on SOAR - Co-Managed administration for SOAR - Compliance Use Cases		
Managed Extended Detection and	Have the ability to overlay SOC services over XDR solution		

Core Functional Requirement Category	Core Functional Requirement	Comment	Comply (Yes/Partial/No)
Response (MXDR) as a service	Augment and optimize threat detection, investigation, response, and hunting across an ecosystem or entire ecosystem.		
Digital Forensic Incident Response Services (DFIR)	- DFIR services on an ad hoc basis - Incident Identification and Classification - Incident Containment and Mitigation - Forensic Evidence Preservation - Forensic Analysis - Root Cause Analysis - Incident Remediation and Recovery - Reporting and Documentation including a comprehensive overview of the incident, including the actions taken, the findings, the extent of the damage, and recommendations for improving security posture		
Incident Response and Cyber Emergency response Unit as a service	- Breach and Attack Simulation - Incident Response Readiness Assessments - Rapid Breach Response - Managed Extended Detection and Response - Emergencies dealing with breaches - Incident response based on NIST frameworks		
All in One SOC as a service	Inclusive of SIEM, SOC,SOAR, Incident Response including Cyber Emergency Response Unit, Managed Extended Detection and Response, Digital Forensic Incident Response Services services AS A Service.		
Platforms and service selection	- Provide hybrid offerings inclusive of physical, Virtual, Cloud based solutions - Provide Hybrid offerings related to Hardware, Licensing and services.		

Acronym

SIEM	Security information and event management
SOAR	Security orchestration, automation and response
EDR	Endpoint detection and response
XDR	eXtended Detection and Response
UEBA	User and entity behavior analytics
SOAR	Security orchestration, automation and response
SOC	Security operations center
NDR	Network detection and response
DFIR	Digital Forensic Incident Response Services

(14) MONTHLY PROJECT LABOUR REPORT (EXAMPLE)

ANNEX 1

CITY OF CAPE TOWN MONTHLY PROJECT LABOUR REPORT



Instructions for completing and submitting forms

General

- 1 The Monthly Project Labour Reports must be completed in full, using typed, proper case characters; alternatively, should a computer not be available, handwritten in black ink.
- 2 Incomplete / incorrect / illegible forms will not be accepted.
- 3 Any conditions relating to targeted labour stipulated in the Contract (in the case of contracted out services or works) shall apply to the completion and submission of these forms.
- 4 This document is available in Microsoft Excel format upon request from the City's EPWP office, tel 021 400 9406, email EPWPLR@capetown.gov.za.

Project Details

- 5 If a field is not applicable insert the letters: NA
- 6 Only the Project Number supplied by the Corporate EPWP Office must be inserted.
The Project Number can be obtained from the Coordinator or Project Manager or from the e-mail address in point 4 above.
- 7 On completion of the contract or works project the anticipated end date must be updated to reflect the actual end date.

Beneficiary Details and Work Information

- 8 Care must be taken to ensure that beneficiary details correspond accurately with the beneficiary's ID document.

- 9 A new beneficiary is one in respect of which a new employment contract is signed in the current month. A certified ID copy must accompany this labour report on submission.
- 10 Was the beneficiary sourced from the City's job seeker database?
- 11 The contract end date as stated in the beneficiary's employment contract.
- 12 Where a beneficiary has not worked in a particular month, the beneficiary's name shall not be reflected on this form at all for the month in question.
- 13 Training will be recorded separately from normal working days and together shall not exceed the maximum of 23 days per month
- 14 Workers earning more than the maximum daily rate (currently R450 excluding any benefits) shall not be reflected on this form at all.

Submission of Forms

- 15 Signed hardcopy forms must be scanned and submitted to the City's project manager in electronic (.pdf) format, together with the completed form in Microsoft Excel format.
- 16 Scanned copies of all applicable supporting documentation must be submitted along with each monthly project labour report. Copies of employment contracts and ID documents are only required in respect of new beneficiaries.
- 17 If a computer is not available hardcopy forms and supporting documentation will be accepted.

PROJECT DETAILS

Numbers in cells below e.g (6) refer to the relevant instruction above for completing and submitting forms

CONTRACT OR WORKS PROJECT NAME: (6)		EPWP SUPPLIED PROJECT NUMBER: (6)														
DIRECTORATE:		DEPARTMENT:														
CONTRACTOR OR VENDOR NAME:		CONTRACTOR OR VENDOR E-MAIL ADDRESS:														
CONTRACTOR OR VENDOR CONTACT PERSON:		CONTRACTOR OR VENDOR TEL. NUMBER:	CELL WORK													
PROJECT LABOUR REPORT CURRENT MONTH (mark with "X")																
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YEAR				

ACTUAL START DATE (yyyy/mm/dd)								ANTICIPATED / ACTUAL END DATE (yyyy/mm/dd) (7)							
TOTAL PROJECT EXPENDITURE / VALUE OF WORK DONE TO-DATE (INCLUDING ALL COSTS, BUT EXCLUDING VAT)															
R															

MONTHLY PROJECT LABOUR REPORT

BENEFICIARY DETAILS AND WORK INFORMATION



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

CONTRACT OR WORKS PROJECT NUMBER:				Year Month		Sheet 1 of		
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No.	(8) First name	(8) Surname	(8) ID number	(9) New Beneficiary (Y/N)	Gender (M/F)	Disabled (Y/N)	(10) Job seeker database (Y/N)	Contract start date (DDMMYY)	(11) Contract end date (DDMMYY)	(12) No. days worked this month (excl. training)	(13) Training days	(14) Rate of pay per day (R – c)
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												
0											0 R	-

Declared by Contractor or Vendor to be true and correct:	Name		Signature	
	Date			

Received by Employer's Agent / Representative:	Name		Signature	
	Date			

SUPPLIER	ITEM	DESCRIPTION	PRICE
Nclose (Pty) Ltd	C3.2 Year 1	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R5 428 414.00
	C3.2 Year 2	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R5 762 647.56
	C3.2 Year 3	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R6 117 460.25
	C3.2 Year 4	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R6 494 119.16
	C3.2 Year 5	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R6 893 969.39
	C3.2 Year 6	SOC as a service 24 x 7 -- monitoring, alerting and reporting	R7 318 438.84
	C3.4 Year 1	Incident response retainer 24 x 7	R90 000.00
	C3.4 Year 2	Incident response retainer 24 x 7	R95 541.40
	C3.4 Year 3	Incident response retainer 24 x 7	R101 423.99
	C3.4 Year 4	Incident response retainer 24 x 7	R107 668.78
	C3.4 Year 5	Incident response retainer 24 x 7	R114 298.07
	C3.4 Year 6	Incident response retainer 24 x 7	R121 335.53
	C7.1 Year 1	Service Level Agreement SLA for City managed SIEM	R524 841.00
	C7.1 Year 2	Service Level Agreement SLA for City managed SIEM	R557 156.05
	C7.1 Year 3	Service Level Agreement SLA for City managed SIEM	R591 460.78
	C7.1 Year 4	Service Level Agreement SLA for City managed SIEM	R627 877.68

PART 5: PRICING SCHEDULE

	C7.1 Year 5	Service Level Agreement SLA for City managed SIEM	R666 536.82
	C7.1 Year 6	Service Level Agreement SLA for City managed SIEM	R707 576.24

C2	Labour costs – ad hoc							
	Services / Resource Description	Unit	Price Year 1 (Excl VAT)	Price Year 2 (Excl VAT)	Price Year 3 (Excl VAT)	Price Year 4 (Excl VAT)	Price Year 5 (Excl VAT)	Price Year 6 (Excl VAT)
C2.1	Project Manager	Per Hour	R 1 770.00	R 1 895.00	R 2 030.00	R 2 170.00	R 2 320.00	R 2 485.00
C2.2	Architect	Per Hour	R 2 100.00	R 2 250.00	R 2 410.00	R 2 580.00	R 2 760.00	R 2 955.00
C2.3	SME (Subject Matter Expert)	Per Hour	R 2 100.00	R 2 250.00	R 2 410.00	R 2 580.00	R 2 760.00	R 2 955.00
C2.4	Digital Forensics and Incident Response	Per Hour	R 1 710.00	R 1 830.00	R 1 960.00	R 2 100.00	R 2 250.00	R 2 410.00

PART 6: OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

(11) OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

AGREEMENT MADE AND ENTERED INTO BETWEEN THE CITY OF CAPE TOWN (HEREINAFTER CALLED THE "CCT") AND

Nclose Pty (Ltd).....,
(Supplier/Mandatory/Company/CC Name)

IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 AS AMENDED.

I, ..., representing

....., as an employer
in its own right, do hereby undertake to ensure, as far as is reasonably practicable, that all work will be performed, and all equipment, machinery or plant used in such a manner as to comply with the provisions of the Occupational Health and Safety Act (OHSA) and the Regulations promulgated thereunder.

I furthermore confirm that I am/we are registered with the Compensation Commissioner and that all registration and assessment monies due to the Compensation Commissioner have been fully paid or that I/We are insured with an approved licensed compensation insurer.

COID ACT Registration Number: OR

Compensation Insurer: Policy No.:

I undertake to appoint, where required, suitable competent persons, in writing, in terms of the requirements of OHSA and the Regulations and to charge him/them with the duty of ensuring that the provisions of OHSA and Regulations as well as the Council's Special Conditions of Contract, Way Leave, Lock-Out and Work Permit Procedures are adhered to as far as reasonably practicable.

I further undertake to ensure that any subcontractors employed by me will enter into an occupational health and safety agreement separately, and that such subcontractors comply with the conditions set.

I hereby declare that I have read and understand the Occupational Health and Safety Specifications contained in this tender and undertake to comply therewith at all times.

I hereby also undertake to comply with the Occupational Health and Safety Specification and Plan submitted and approved in terms thereof.

Signed at on the day of 20

Witness

for and on behalf of
City of Cape Town

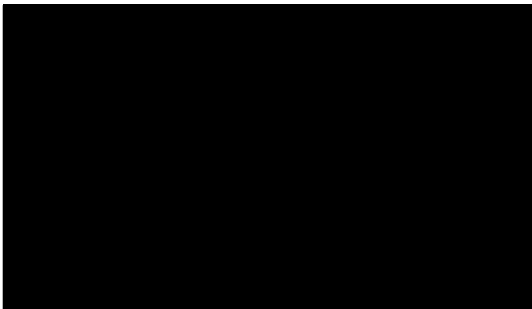
PART 7: CONTRACT PRICE ADJUSTMENT AND/OR RATE OF EXCHANGE VARIATION

NOT APPLICABLE

PART 8: INSURANCE BROKER'S WARRANTY

TENDER NO: 92S/2023/24

(12) INSURANCE BROKER'S WARRANTY (PRO FORMA)



Date 20/11/2023

CITY OF CAPE TOWN
City Manager
Civic Centre
12 Hertzog Boulevard
Cape Town
8000

Dear Sir

TENDER NO.: 92S/2023/24

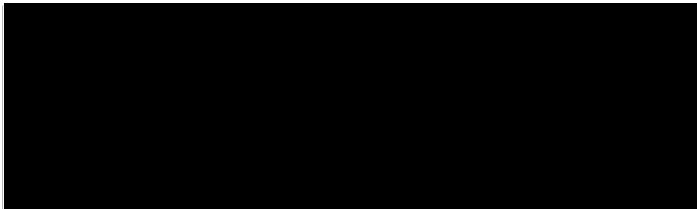
TENDER DESCRIPTION: **SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE,
SOFTWARE, SERVICES AND LICENSING**

NAME OF SUPPLIER: Nclose (Pty) Ltd

I, the undersigned, do hereby confirm and warrant that all the insurances required in terms of the abovementioned contract have been issued and/or in the case of blanket/umbrella policies, have been endorsed to reflect the interests of the CITY OF CAPE TOWN with regard to the abovementioned contract, and that all the insurances and endorsements, etc., are all in accordance with the requirements of the contract.

I furthermore confirm that all premiums in the above regard have been paid.

Yours faithfully



PART 9: INFORMATION PROVIDED BY SUPPLIER

All of the aforementioned/supporting information, as submitted/provided by the Supplier for **TENDER NO: 092S/2023/24 – SUPPLY, SUPPORT, MAINTENANCE OF ICT SECURITY RELATED INFRASTRUCTURE, SOFTWARE, SERVICES AND LICENSING** is incorporated into this Memorandum of agreement by the mere reference thereof.