

DOCUMENT 1 OF 2

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MEMORANDUM OF AGREEMENT

FOR THE

**DEMAND RESPONSE AGGREGATOR GOODS AND/OR SERVICES OF
UP TO 60MW FOR THE CITY OF CAPE TOWN**

MADE AND ENTERED INTO BETWEEN

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

And

[REDACTED]

UNINCORPORATE JOINT VENTURE

REGISTRATION NO. [REDACTED] and [REDACTED]

Contract No. 150S/2022/23



PREAMBLE

WHEREAS Tender 150S/2022/23 was awarded to [REDACTED] UNINCORPORATE JOINT VENTURE in line with the SCM- Bid Adjudication Committee resolution SCMB 59/06/23 dated 12 June 2023 for the DEMAND RESPONSE AGGREGATOR GOODS AND/OR SERVICES OF UP TO 60MW FOR THE CITY OF CAPE TOWN, for a period of 84 months from the date of commencement until 30 June 2030,

AND WHEREAS it is recorded that this Contract will be governed by the provisions of the National Treasury's General Conditions of Contract for the Supply of Goods and/or Services, Revised July 2010 ("GCC"), read with the Special Conditions of Contract ("SCC").

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 the Director: Sustainable Energy Markets duly authorised hereto;
- 1.2. [REDACTED] Unincorporate Joint Venture, a private company duly registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED] and [REDACTED], with its principal place of business situated at [REDACTED] ("the Supplier"), herein represented by its duly authorised representative, [REDACTED] in his/her capacity as Business Development Manager;

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 Annexure 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 The form of Offer and Acceptance;
 - 2.1.2 Special Conditions of Contract;
 - 2.1.3 General Conditions of Contract.
 - 2.1.4 Parts and Annexures to this Contract; and
 - 2.1.5 Any other documents incorporated by reference.

3. APPOINTMENT AND DURATION

- 3.1. The Purchaser hereby appoints the Supplier to perform the Goods and/or Services to the Purchaser from **date of commencement**.
- 3.2. Unless terminated earlier in accordance with the provisions of this Contract, this Contract shall terminate on **30 June 2030**.

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 Specifications.

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.
- 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.

PART 1: DETAILS OF SUPPLIER

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	UNINCORPORATE JOINT VENTURE BETWEEN [REDACTED]
Trading as (if different from above)	[REDACTED]
Company / Close Corporation registration number (if applicable)	[REDACTED]
Postal address	[REDACTED] Postal Code [REDACTED]
Physical address (Chosen domicilium citandi et executandi)	[REDACTED]
Contact details of the person duly authorised to represent the tenderer	Name: Mr/Ms [REDACTED] (Name & Surname) Telephone: [REDACTED] Fax: [REDACTED] N/A Cellular Telephone: [REDACTED] E-mail address: [REDACTED]
Income tax number	[REDACTED]
VAT registration number	[REDACTED]
SARS Tax Compliance Status PIN	[REDACTED]
City of Cape Town Supplier Database Registration Number (See Conditions of Tender)	[REDACTED]
National Treasury Central Supplier Database registration number (See Conditions of Tender)	[REDACTED]

Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered?	☒ Yes ☐ No If yes, enclose proof
Is tenderer a foreign based supplier for the Goods / Services / Works offered?	☐ Yes ☒ No If yes, answer the Questionnaire to Bidding Foreign Suppliers (below)
Questionnaire to Bidding Foreign Suppliers	a) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? ☐ Yes ☒ No
	b) Does the tenderer have a permanent establishment in the Republic of South Africa? ☐ Yes ☒ No
	c) Does the tenderer have any source of income in the Republic of South Africa? ☐ Yes ☒ No
	d) Is the tenderer liable in the Republic of South Africa for any form of taxation? ☐ Yes ☒ No

PART 1: AGREEMENT -FORM OF OFFER AND ACCEPTANCE

(4) FORM OF OFFER AND ACCEPTANCE

TENDER 150S/2022/23: DEMAND RESPONSE AGGREGATOR SERVICES OF UP TO 60MW FOR THE CITY OF CAPE TOWN

OFFER: (TO BE FILLED IN BY TENDERER):

Required Details (Please provide applicable details in full):

Name of Tendering Entity* ("the tenderer")	[REDACTED]
Trading as (if different from above)	[REDACTED]

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)

Business Development Manager

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 devolving on it in terms of the Contract.

Signature: [REDACTED]

Print Name(s): [REDACTED]

On behalf of the tenderer (duly authorised)

Date

06-12-2022

FORM OF OFFER AND ACCEPTANCE (continued)

ACCEPTANCE (TO BE FILLED IN BY THE CITY OF CAPE TOWN)

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 7, and the sub-clauses therein, cited in pages 1 to 4 above;
- Part 2: Special Conditions to Contract
- Part 3: General Conditions of Contract
- Part 4: Specifications
- Part 5: Price Schedule
- Part 6: Occupational Health and Safety
- Part 7: Supporting Schedules

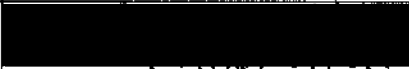
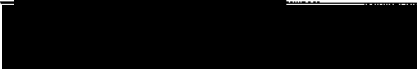
and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

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 the date when the parties have signed the table below and confirms receipt from the purchaser of one fully completed original copy of this agreement, including the schedule of deviations (if any). The supplier (now 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.

The Parties	Purchaser	Supplier
Business Name	CITY OF CAPE TOWN	
Business Registration	N/A	
Tax number (VAT)	4500193497	
Physical Address	Tower Block, Civic Centre, 12 Hertzog Boulevard Cape Town 8001	
Accepted contract sum including tax	Rates based	Rates based
Accepted contract duration	For a period of 84 months from the date of commencement until 30 June 2030	For a period of 84 months from the date of commencement until 30 June 2030
Signed – who by signature hereto warrants authority		
Name of signatory		

Signed: Date	9 July 2024	05 JULY 2024
Signed: Location	Bellville, Cape Town	PLATTEKLOOF, CPT
Signed: Witness		
Name of Witness		

FORM OF OFFER AND ACCEPTANCE (continued)
(TO BE FILLED IN BY THE CITY OF CAPE TOWN)

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 SUPPLIERS NO: 4 issued to tenders on 18 November 2022

Details Suppliers are to note the following:

- a) Replaced the contract period from date of commencement and not exceeding 36 months to from date of commencement and not exceeding 84 months.
- b) Replaced (5) PRICE SCHEDULE in VOLUME 2: RETURNABLE DOCUMENTS with updated schedule that only required pricing for year 1.
- c) Replaced Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation in VOLUME 2: RETURNABLE DOCUMENTS.
- d) Replaced clause 17.4 of special conditions of contracts in volume 3: draft contract with "The prices for the goods delivered and goods and/or services performed shall be subject to contract price adjustment and the following conditions will be applicable: refer to Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation".

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.

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 goods and/or services 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 "goods and/or 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 Purchaser 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 purchase 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 purchase order, the supplier shall commence with and carry out the delivery of the goods and/or services 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 and/or services including any temporary goods and/or 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 and/or services
- 3.5.5 Be continuously represented during the delivery of the goods and/or services 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 and/or services within the period stated in clause 10, or any extensions thereof in terms of clause 21
- 3.5.9 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.
- 3.5.10 Comply with the provisions of the OHAS Act & all relevant regulations.
- 3.5.11 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.
- 3.5.12 Deliver the goods and/or services 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 purchase orders for the goods and/or services 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 and/or services as set out herein.
- 3.6.3 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.
- 3.6.4 Grant or refuse any extension of time requested by the supplier to the period stated in clause 10.
- 3.6.5 Quality assure the deliverables 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.
- 3.6.6 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 goods and/or services or contract within two (2) years of completion of the goods and/or 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 purchaser.

5.8.2 The supplier hereby assigns to the Purchaser, 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 Annexure A has a table outlining the Intellectual Property that the Parties have agreed to assign to the Purchaser.

5.8.3 The supplier shall, and warrants that it shall:

5.8.3.1 not be entitled to use the Purchaser'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 Purchaser'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 Purchaser;

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 Purchaser;

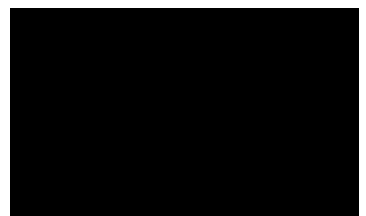
5.8.3.4 comply with all reasonable directions or instructions given to it by the Purchaser in relation to the form and manner of use of the Purchaser Intellectual Property, including without limitation, any brand guidelines which the Purchaser may provide to the supplier from time to time;

5.8.3.5 procure that its employees, directors, members and suppliers comply strictly with the provisions of clauses 5.8.3.1 to 5.8.3.3 above; unless the Purchaser expressly agrees thereto in writing after obtaining due internal authority.

5.8.4 The supplier represents and warrants to the Purchaser that, in providing goods and/or services 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 Purchaser 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 Purchaser's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Purchaser by the supplier and no copies thereof shall be retained by the supplier unless the Purchaser expressly and in writing, after obtaining due internal authority, agrees otherwise.

7. Performance Security



Delete clause 7.1 to 7.4 and replace with the following:

'Not Applicable. Suppliers 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 goods and/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 supplier 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 purchase order. Purchase 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 purchase 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

No warranty applicable

16. Payment

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

- 16.1 A monthly payment cycle will be the norm. All invoices which are dated on or before the 20th of a particular month will typically be paid between the 23rd and 26th of the following month. The supplier may submit a fully motivated application regarding more frequent payment to the Purchaser's Director: Expenditure for consideration. Requests for more frequent payments will be considered at the sole discretion of the Purchaser and is not a right in terms of this contract.

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 purchase order, the supplier shall only be entitled to payment for goods and/or services 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 and/or services.

- 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 goods and/or services performed shall be subject to contract price adjustment and the following conditions will be applicable:

The prices for the goods delivered and goods and/or services performed shall be subject to contract price adjustment and the following conditions will be applicable: refer to Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation

- 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 Supplier 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-supplier 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-supplier to the same provision to take out forward cover as described in sub-paragraph (e) below.

(e) The Supplier (or sub-supplier) shall within five working days from the date of placing a firm purchase 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 Supplier on the schedule titled "**Price Basis for Imported Resources**".

(f) When the Supplier (or sub-supplier) 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-supplier'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 Supplier 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 and/or services, 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 and/or services not described in a written instruction from the purchaser, such work will not become due and payable until amended purchase 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 sub supplier, his agents or employees as fully as if they were the acts, defaults or negligence of the supplier.
- 20.3 Any appointment of a sub supplier shall not amount to a contract between the CCT and the sub supplier, or a responsibility or liability on the part of the CCT to the sub supplier and shall not relive 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-suppliers 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 Not Applicable.

- 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 a Purchase 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 Purchaser;
 - 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 whose identity shall be agreed to between the Parties within fourteen (14) days, failing which the referring party will be entitled to approach the Chairperson of the Cape Bar for a recommendation of a mediator experienced in the subject matter of the dispute, to act as the mediator. 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-suppliers 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 suppliers 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 4500193497.

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.

36. Protection of personal information

36.1 The Supplier acknowledges that, for the purposes of this agreement, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which Purchaser is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.

36.2 The Supplier agrees that they will at all times comply with POPIA and Purchaser's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this agreement in a lawful manner, and only to the extent required to execute the goods and/or services, or to provide the goods and to perform their obligations in terms of the service level agreement.

36.3 The Supplier agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its suppliers or other authorised individuals comes into contact in relation to the service level agreement.

36.4 The supplier agrees that it shall notify the Purchaser immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

36.5 Unless so required by law, the Supplier agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the Purchaser.

36.6 The Supplier hereby indemnifies and holds the Purchaser harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Purchaser arising from or in relation to the Supplier's (and/or its employees', agents' and sub-suppliers') non-compliance with applicable data protection laws and/or other legislation.

37. Measurement and Verification

37.1 The supplier shall ensure that the goods and/or services of a certified Measurement and Verification (M&V) specialist is at its disposal for utilisation in the determination of actual load shifted or reduced upon intervention. This will include the monthly testing of the capacity of the aggregator to shift load.

37.2 The supplier may be required to provide verification test results, as performed by an accredited M&V specialist, to prove that it is capable of providing the contracted MW.

38. Review Clause

38.1 This Agreement is valid for a period of 84 months from the date of commencement until 30 June 2030. This Agreement shall be reviewed once every three years; however, in lieu of a review during

any period specified, the current Agreement will remain in effect. The purchaser reserves the right to reduce or increase the scope of works according to the dictates of the budget, to terminate this contract, and/or to review and terminate this contract as is contemplated in Section 116(1)(b)(iii) of the Local Government: Municipal Finance Management Act 56 of 2003, without adjustment to the agreed rates, sums or fees and without payment of any penalty or surcharge in this regard. The supplier shall however be entitled to pro-rata payment for all goods and/or services carried out in terms of any adjustment to the Scope of Work or, in the case of termination, payment for good delivered.

- 38.2 As required by section 116(2)(b) of the Local Government: Municipal Financial Management Act 56 of 2003, the City shall monitor the performance of the supplier/supplier on at least a monthly basis, and the supplier agrees to provide the City with its full cooperation in this regard.

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 goods and/or 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 purchase 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 purchase 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 purchase 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 sub suppliers) 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 'Purchase order' means an official written purchase 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 'Goods and/or services' means those functional goods and/or services ancillary to the supply of the goods, such as transportation and any other incidental goods and/or 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 purchase orders, including bids for functional and professional goods and/or 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, goods and/or 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 goods and/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 supplier 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 goods and/or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or goods and/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 goods and/or 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 purchase 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 Goods and/or services

- 13.1 The supplier may be required to provide any or all of the following goods and/or services, including additional goods and/or 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 goods and/or 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 goods and/or 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 goods and/or 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 goods and/or 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 sub supplier(s) should encounter conditions impeding timely delivery of the goods and performance of goods and/or 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 goods and/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 goods and/or 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 goods and/or 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 goods and/or 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 goods and/or 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 goods and/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 goods and/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 supplier to the State, or the State may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to supplies or goods and/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 purchase 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 Goods and/or 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 supplier(s) was/were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or supplier(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 supplier(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 supplier(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 supplier(s) concerned.

PART 4: SPECIFICATIONS

1. BACKGROUND

The City of Cape Town ("the CCT") is embarking on an extensive program to enhance its electrical energy security, and increase its independence from Eskom. As part of this program, the CCT is looking to acquire the goods and/or services of a third party aggregator for demand response (DR) goods and/or services of up to 60MW from the residential and commercial sectors. This tender process will seek to appoint a single or multiple aggregators that can provide the City with adequate demand response when required. The initial focus will be on the mitigation of the impact of loadshedding, but the requirement can be extended to other periods when required, such as over typical peak demand periods.

2. SCOPE OF WORK

The CCT is thus seeking the appointment of (a) suitably qualified and experienced Demand Response (DR) aggregator(s) that will support the CCT in its objective to mitigate the impact of loadshedding over the next seven years, after commencement of contract. This DR aggregator will be required to provide expert service in the procurement and management of participants in the demand response program of the City.

Functional Requirements:

- a) Aggregators will be responsible for the engagement, procurement, contracting and management of market participants, restricted to City-supplied customers. The City will not be engaged in any part of this process.
- b) The demand response program under this tender will be limited to low-voltage customers, primarily residential, residential estates and/or small scale commercial customers.
- c) The tender is technology agnostic and the City will not prescribe the technology to be used, nor the approach followed by the aggregators in securing the proposed demand response. The bidder will be responsible for all software licensing costs and disbursements related to the deployment of the proposed technology.
- d) The proposed solution must be fully automated and implementable from the City's network control centre.
- e) The proposed solution must be able to interface (as referred to in functional requirement 'f' below) with the existing Advanced Distribution Management System (ADMS) of the City, and be flexible enough to interface with planned future systems, i.e. its "future proof" capability must be clearly demonstrated.
- f) The proposed solution must comply with the communications protocols as specified in the City of Cape Town Technical Standard for Embedded Generation (EEB 705) as per **Annexure A**, and specifically IEEE 1815-2012 (DNP 3 over Ethernet) or IEC 60870-5-104 protocols for SCADA communication with CCT.
- g) The proposed solution must demonstrably meet all cybersecurity requirements of the City as per EEB 705 (**Annexure A**)
- h) The winning bidder(s) will not have any overlap with other demand response aggregators used by the City. If there are more than one successful bidder, these bidders will be required to ensure a suitable geographical split in terms of the loads being procured under this demand response program.
- i) Bidders are to specify the pre-defined load blocks within which the demand response aggregation will be implemented, in alignment with the loadshedding blocks used by the CCT.
- j) The response time to achieve the verified load reduction upon CCT request or instruction should not exceed 10 minutes.
- k) The proposed technology must enable the management of cold load pickup during restoration through controlled switching functionality.

The bidder will be expected to be able to provide the total contracted load curtailment for a minimum of 4 hours per day, as and when the need arises.

Bidders must include a project proposal detailing the schedule and implementation plan to be followed in procuring the proposed demand response customers on this program.

In addition to the above the bidders will be required to appoint an independent Measurement and Verification (M&V) specialist that is accredited by a recognised professional body, at its own cost. CCT must be satisfied with the competence and independence of the verifier.

The CCT intends to appoint a single supplier or multiple suppliers ("the winner(s)") for the allocation of work. If insufficient responsive bids are received, the CCT reserves the right not to appoint a supplier at all.

The contract period shall be from date of commencement and not exceeding 84 months.

3. TRADE NAMES OR PROPRIETARY PRODUCTS

Bid specifications may not make any reference to any particular trade mark, name, patent, design, type,

specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "or equivalent".

4. EMPLOYMENT OF SECURITY PERSONNEL

All security staff employed by the supplier on behalf of the CCT or at any CCT property must be registered with Private Security Industry Regulatory Authority (PSIRA). Proof of such registration must be made available to the CCT's agent upon request.

5. FORMS FOR CONTRACT ADMINISTRATION

The supplier shall complete, sign and submit with each invoice, the following:

- a) Monthly Project Labour Report (**Annex 3**).
- b) B-BBEE Sub-Contract Expenditure Report (**Annex 4**).
- c) Joint Venture Expenditure Report (**Annex 5**).

The Monthly Project Labour Report must include details of all labour (including that of sub-suppliers) that are South African citizens earning less than R350.00 per day, as adjusted from time to time (excluding any benefits), who are employed on a temporary or contract basis on this contract in the month in question.

In addition to the Monthly Project Labour Report the Supplier shall simultaneously furnish the CCT's Agent with copies of the employment contracts entered into with such labour, together with certified copies of identification documents, proof of attendance in the form of attendance register or timesheets as well as evidence of payments to such labour in the form of copies of payslips or payroll runs. If the worker is paid in cash or by cheque, this information must be recorded on the envelope and the worker must acknowledge receipt of payment by signing for it and proof of such acknowledgement shall be furnished to the CCT's Agent.

The Monthly Project Labour Reports shall be completed and submitted in accordance with the instructions therein.

The **B-BBEE Sub-Contract Expenditure Report** is required for monitoring the supplier's compliance with the sub-contracting conditions of the **Preference Schedule**.

The **Joint Venture Expenditure Report** is required for monitoring the joint venture's/consortium/partnership compliance with the percentage contributions of the partners as tendered, where the joint venture/consortium/partnership has been awarded preference points in respect of its consolidated B-BBEE scorecard.

PART 5: PRICE SCHEDULE

DR MW Band	Description	Unit of measure	Year 1 (Month 1-12): Price per unit (excl VAT)
0MW to 40MW	Fixed monthly charge	R/kW per month	R139.80
41MW & UP	Fixed monthly charge	R/kW per month	R136.50

- * The City may select not to perform the verification test during any given month. The service provider will then be paid a fixed monthly charge based on the previous verified load shifting performance (e.g. deployment of the demand response service by the City during the previous month)

Pricing Instructions:

- 5.1 State the rates and prices in Rand unless instructed otherwise in the tender conditions.
- 5.2 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful supplier, such duties, taxes and levies being those applicable 14 days before the closing time stated in the General Tender Information.
- 5.3 All prices tendered must include all expenses, disbursements and costs (e.g. transport, accommodation etc.) that may be required for the execution of the supplier's obligations in terms of the Contract, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Contract as well as overhead charges and profit (in the event that the tender is successful). All prices tendered will be final and binding.
- 5.4 The successful supplier is required to perform all tasks listed against each item. The supplier must therefore tender prices/rates on all items as per the section in the Price Schedule. **An item against which no rate is/are entered, or if anything other than a rate or a nil rate (for example, a zero, a dash or the word "included" or abbreviations thereof) is entered against an item, it will also be regarded as a nil rate having been entered against that item, i.e. that there is no charge for that item. The Supplier may be requested to clarify nil rates, or items regarded as having nil rates; and the Purchaser may also perform a risk analysis with regard to the reasonableness of such rates.**
- 5.5 Provide fixed rates and prices for the duration of the contract that are not subject to adjustment except as otherwise provided for in clause 17 of the Conditions of Contract and as amplified in the Special Conditions of Contract.
- 5.6 All rates must be market related and in line with National Treasury cost containment measures.

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

(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 Platenburg on the 6th day of December 2022

Witness

Signed at Bellville on the 9th day of July 2024

Witness

for and on behalf of
City of Cape Town

PART 7: SUPPORTING SCHEDULES

Schedule 8: Contract Price Adjustment and/or Rate of Exchange Variation

- 8.1 The Contract Price Adjustment mechanism and/or provisions relating to Rate of Exchange Variation, contained in this schedule is compulsory and binding on all suppliers.
- 8.2 Failure to complete this schedule or any part thereof may result in the tender offer being declared non-responsive.
- 8.3 Suppliers are not permitted to amend, vary, alter or delete this schedule or any part thereof unless otherwise stated in this schedule, failing which the tender offer shall be declared non-responsive.
- 8.4 Suppliers are not permitted to offer firm prices except as provided for in the Price Schedule, and if the supplier offers firm prices in contravention of this clause the tender offer shall be declared non-responsive.
- 8.5 Any claim for an increase in the Contract price shall be submitted in writing to the:
Director Supply Chain Management, City of Cape Town,
P O Box 655, Cape Town, 8000 or by email to: CPA.Request@capetown.gov.za and Shane.Prins2@capetown.gov.za two (2) months prior to the month upon which the price adjustment would become effective.
- 8.6 The CCT reserves the right to withhold payment of any claim for contract price adjustment while only provisional figures are available and until the final (revised) figures are issued by the relevant authority.
- 8.7 When submitting a claim for contract price adjustment a supplier shall indicate the actual amount claimed for each item. A mere notification of a claim for contract price adjustment without stating the new price claimed for each item shall, for the purpose of this clause, not be regarded as a valid claim.
- 8.8 The CCT reserves the right to request the supplier to submit auditor's certificates or such other documentary proof as it may require in purchase order to verify a claim for contract price adjustment. Should the supplier fail to submit such auditor's certificates or other documentary proof to the CCT within a period of **30 (thirty) days** from the date of the request, it shall be presumed that the supplier has abandoned his claim.
- 8.9 The effective date of any price increases granted will be the date on which the abovementioned documentation/claim is submitted or, by agreement between the Supplier and the City, a subsequent date on which the price increase will be effective.
- 8.10 In instances where the Supplier's price claimed is less than entitled, the lesser price will be accepted.
- 8.11 The CCT reserves the right to apply the indices available at the date of the claim submitted by the Supplier.
- 8.12 **Process that will be followed:**
- Supplier submits all the documentation indicated above prior to the effective date of the variation.
 - The City will consider the variation and based on the documentary evidence, the City may approve the variation.
 - Letters authorising the price variation will be communicated to the supplier indicating the effective date
 - **All purchase orders from the effective date will be generated at the approved contract price. Purchase Orders placed prior to the effective date will not be varied.**
- 8.11 **Price Adjustment Mechanism:**
- 8.11.1 The Contract Price as per GCC shall remain **Firm** for the first 12 months from date of commencement of the contract and no claims for contract price adjustment will be considered for the first 12 months' subject to the provisions in the price schedule.
- 8.11.2 Subject to 8.11.1. Above, Contract Price Adjustment will be applicable as from commencement of the 13 month. Suppliers shall be entitled to claim contract price adjustment as follows:
- 8.11.3 **10%** of the **tendered** rate will remain fixed for the duration of the contract.
- 8.11.4 **90%** of the year on year rate will be subject to adjustment **annually** based on the average percentage of 12 months as published by STATSSA: Consumer Price Index (P0141-Table B2 – CPI headline year-on-year rates) as follows:
- From start of 13th month to the end of the 24th month:** Subject to contract price adjustment in accordance with the **Consumer Price Index (P0141-Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the date of commencement. The **end month** shall be three (3) calendar months prior to the 12th month.

From start of 25th month to end of the 36th month: Subject to the contract price adjustment in accordance with the **Consumer Price Index (P0141–Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the 13th month. The **end month** shall be three (3) calendar months prior to 24th month.

From start of 37th month to end 48th month: Subject to the contract price adjustment in accordance with the **Consumer Price Index (P0141–Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the 25th month. The **end month** shall be three (3) calendar months prior to 36th month.

From start of 49th month to end 60th month: Subject to the contract price adjustment in accordance with the **Consumer Price Index (P0141–Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the 37th month. The **end month** shall be three (3) calendar months prior to 48th month.

From start of 61st month to end 72nd month: Subject to the contract price adjustment in accordance with the **Consumer Price Index (P0141–Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the 49th month. The **end month** shall be three (3) calendar months prior to 60th month.

From start of 73rd month to end 84th month: Subject to the contract price adjustment in accordance with the **Consumer Price Index (P0141–Table B2 – CPI headline year-on-year rates)**. **Base month** for the price adjustment shall be three (3) calendar months prior to the 61st month. The **end month** shall be three (3) calendar months prior to 72nd month.

The **average CPI** will be calculated, the base month to the end month (both included) divided by the number of months.

Example:

The claim will be based on the **average** between the "base month" and the "end month" e.g.: $7+6+9+6 = 28$ $(28/4) = 7$ therefore the claim will be 7%.

INSURANCE BROKER'S WARRANTY

Letterhead of supplier's Insurance Broker

Date _____

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

Dear Sir

TENDER NO.: 150S/2022/23

TENDER DESCRIPTION: DEMAND RESPONSE AGGREGATOR GOODS AND/OR SERVICES OF UP TO 60MW FOR THE CITY OF CAPE TOWN

NAME OF SUPPLIER: _____

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

Signed: _____

For: _____ (Supplier's Insurance Broker)

(14.1) 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		EPWP SUPPLIED																	
PROJECT NAME: (6)		PROJECT NUMBER: (6)																	
DIRECTORATE:		DEPARTMENT:																	
CONTRACTOR OR		CONTRACTOR OR VENDOR																	
VENDOR NAME:		E-MAIL ADDRESS:																	
CONTRACTOR OR VENDOR		CONTRACTOR OR VENDOR																	
CONTACT PERSON:		TEL. NUMBER:																	
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
ISIKEKO SASAKAPA
STAD KAAPSTAD

CONTRACT OR WORKS PROJECT NUMBER:				Year Month		Sheet 1 of						
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)	Contract end date (DDMMYY)	(12) No. days worked this month (excl. training)	(13) Training days	(14) Rate of pay 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								

(14.2) BBBEE SUB-CONTRACT EXPENDITURE REPORT (PRO FORMA)TENDER NO. AND
DESCRIPTION: _____

SUPPLIER: _____

B-BBEE SUB-CONTRACT EXPENDITURE REPORT

Rand Value of the contract (as defined in Schedule 4: Preference Schedule) (P*)	R	B-BBEE Status/Level of Prime Supplier	
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Name of Sub-supplier (list all)	B-BBEE Status Level of supplier ¹	Total value of Sub-contract (excl. VAT) ¹	Value of Sub-contract work to date (excl. VAT) ¹	Value of Sub-contract work to Sub-suppliers with a lower B-BBEE Status Level than supplier
Sub-supplier A		R	R	R
Sub-supplier B		R	R	R
Sub-supplier C		R	R	R
¹ Documentary evidence to be provided				Total: R
Expressed as a percentage of P*				%

SignaturesDeclared by
supplier to be
true and
correct:

Date: _____

Verified by
CCT Project
Manager:

Date: _____

(14.3) PARTNERSHIP/ JOINT VENTURE (JV) / CONSORTIUM/ EXPENDITURE REPORT

TENDER NO. AND
DESCRIPTION: _____

SUPPLIER: _____

PARTNERSHIP/ JOINT VENTURE (JV)/ CONSORTIUM EXPENDITURE REPORT

Rand value of the contract (as defined
in
Schedule 4: Preference Schedule) (P*)

R

B-BBEE Status Level of Partnership/
Joint Venture (JV)/ Consortium

Name of partners to the Partnership/ JV / Consortium (list all)	B-BBEE Status Level of each partner at contract award	Percentage contribution of each partner as per the Partnership/ JV/ Consortium Agreement ¹	Total value of partner's contribution (excl. VAT) ¹ $B = A\% \times P^*$	Value of partner's contribution to date (excl. VAT) ¹ C	Value of partner's contribution as a percentage of the work executed to date $D = C/P^* \times 100$
		A			
Partner A		%	R	R	%
Partner B		%	R	R	%
Partner C		%	R	R	%

¹Documentary evidence to be provided

Signatures

Declared by
supplier to be
true and
correct: _____

Date: _____

Verified by
CCT Project
Manager: _____

Date: _____