CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SERVICE LEVEL AGREEMENT

IN RESPECT OF TENDER 174S/2019/2020 – FOR THE SUPPLY, DELIVERY AND INSTALLATION OF NEW BOOK THEFT DETECTION SYSTEMS AND THE MAINTENANCE OF EXISTING BOOK THEFT DETECTION SYSTEMS FOR THE LIBRARY AND INFORMATION SERVICES DEPARTMENT

Concluded between

THE CITY OF CAPE TOWN

(herein referred to as the **"Purchaser"**)

AND

[redacted]

(hereinafter referred to as the **"Supplier"**)

[redacted]

1. PREAMBLE

1.1. **WHEREAS** Tender 174S/2019/20 was awarded to the Supplier on **16 March 2020** in line with resolution **SCMB 79/03/20**, for the Supply, Delivery and Installation of New Book Theft Detection Systems and the Maintenance of Existing Book Theft Detection Systems for the Library and Information Department for a period of **60 (sixty) months from commencement date**.

1.2. **AND WHEREAS** in line with resolution **SCMB 79/03/20**, council approved the contract in terms of section 33 of the Local Government: Municipal Financial Management Act 56 of 2003 on the same specifications, terms and conditions as advertised in Tender 174S/2019/20.

1.3. **AND WHEREAS** it is recorded that this Service Level Agreement will be governed by the provisions of the **National Treasury –Conditions of Contract (revised 2010)** ("**GCC**"), read with the Contract Specific Data ("**SCC**") (collectively, the "**Contract**").

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. PARTIES

The Parties to this Contract are:

2.1. **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 **City Manager or his nominee** and duly authorised hereto;

2.2. [redacted] a private [redacted], with its principal place of business situated at [redacted] (the "**Supplier**"), herein represented by its duly authorised representative, [redacted] capacity as Account Manager.

[redacted]

each a "**Party**" and together the "**Parties**".

3. INTERPRETATION AND DEFINITIONS

3.1 The headings in this MOA are inserted for reference purposes only and shall in no way govern or affect the interpretation of this MOA, nor modify or amplify the terms of this MOA or any clause hereof.

3.2 Unless the context otherwise requires, reference to the singular shall include a reference to the plural, and vice versa, reference to any gender shall include a reference to all other genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.

3.3 Any reference to "the Parties" or "a Party" will mean a reference to the Purchaser, the Supplier or both, depending on the context.

3.4 All annexures to this MOA form an integral part hereof and expressions defined in the MOA shall, unless the context otherwise requires, bear the same meaning in such annexures.

3.5 Unless inconsistent with the context, the expressions set forth in this MOA shall bear the following meanings:

3.5.1.	**"business day"**	Means the days of the week excluding Saturday, Sunday and public holidays;
3.5.2.	**"business hours"**	Shall mean the hours between 08:00 and 17:00 of a business day;
3.5.3	**"business week"**	Shall mean Monday to Friday, excluding public holidays;
3.5.4.	**"MOA or Service Level Agreement"**	means this Memorandum of Agreement (including annexures) entered into between the Purchaser and the

[redacted]

		Supplier and shall be used interchangeably;
3.5.5.	**"the parties"**	means the Parties to this Agreement referred to in clause 2 and "**Party**" shall mean either of them;
3.5.6	**"the tender"**	Means tender number 174S/2019/2020 for the Supply, Delivery and Installation of New Book Theft Detection Systems and the Maintenance of Existing Book Theft Detection Systems for the Library and Information Department;
3.5.7.	**"the Commencement Date"**	Means the signature date;
3.5.8.	**"the completion date'**	Means 60 (sixty) months from commencement date.
3.5.9.	**"Signature Date"**	means the date on which this Agreement is signed by the Party signing last in time; and
3.5.10.	**"VAT"**	means Value Added Tax, as defined in the Value Added Tax Act 89 of 1991, as all references to "VAT" shall include any related statute, laws, regulations, notices, directions and provisions relating to VAT or similar taxes.

4. CONTRACT PERIOD

4.1. The Purchaser hereby appoints the Supplier to provide the Goods and/or Services to the Purchaser from the commencement date subject to the provisions set out in the Contract.

4.2. Unless terminated earlier in accordance with the provisions as set out in the GCC or any other provision in terms of the Contract, this Contract shall commence on the **Commencement Date** and shall endure for a period of **60 (sixty) months**.

[redacted]

5. PRICING SCHEDULE

5.1. The Parties agree and record herein that the Purchaser shall pay to the Supplier the amounts as provided for in Section 5: Pricing Schedule in the tender document (also attached and marked Annexure "E"), and the Supplier shall accept such payment.

5.2. The Supplier shall not be entitled to any other consideration for the rendering of the services other than as provided for in this Contract.

6. MUTUAL GOOD FAITH / CO-OPERATION

6.1. 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.

6.2. 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.

7. CONFLICT BETWEEN THIS MOA AND THE TERMS AND CONDITIONS OF PREVIOUS AGREEMENTS ENTERED INTO BETWEEN THE PARTIES

7.1. This MOA shall be read together with and be subject to the terms, conditions and/or specifications agreed to by the parties of the contractual agreement(s) entered into between the parties in relation to the tender, which terms and conditions shall include but not be limited to the tender.

7.2. Should there be any conflict between the clause, terms and/or specifications of the MOA and the Previous Agreements entered into between the parties, the clause, term, specification or condition of the Previous Agreements entered into between the parties shall take precedence.

[redacted]

8. LIMITATION OF THE PURCHASER'S LIABILITY AND INDEMNITY, REGARDING THIS AGREEMENT

8.1. Without detracting from, and in addition to any of the other indemnities recorded in this Agreement, the Tenderer shall be solely liable for and hereby indemnifies and holds the Purchaser harmless against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expenses in connection with or arising from the amendment of the Tender in terms of this Agreement, including but not limited to the amendment of the Contract Period.

8.2. The Tenderer and/or its employees, agents, concessionaires, suppliers, Suppliers or customers shall not have any claim of any nature against the Purchaser for any loss, damage, injury, loss of profit or death which any of them may directly or indirectly suffer in connection with or arising from the amendment of the Tender in terms of this Agreement, including but not limited to the extension of the Contract Period. The Tenderer also hereby waives any such claim it may have.

9. WHOLE AGREEMENT, WAIVER AND VARIATION

9.1. This MOA embodies the whole agreement between the Parties. No other agreement, whether oral, implied or otherwise, will be of any force and effect unless it is reduced to writing and signed by the Supplier and the Purchaser, or their duly appointed representatives. There has been no representation which forms part of this MOA which has not been included herein.

9.2. Any relaxation, indulgence or waiver which the Purchaser may grant to the Supplier or any condonation by the Purchaser of any breach of the terms of this MOA will not become binding on the Purchaser. The Purchaser will at all times be entitled to claim due and prompt performance by the Supplier of all of the Supplier's obligations in terms of this MOA.

9.3. No variation of the terms of this MOA will be of any force or effect unless reduced to writing and signed by the Supplier and the Purchaser, or their duly appointed representatives.

The Agreements and Contract Data, Pricing Data Scope of Work and Site

[redacted]

Information arising from the invitation to tender shall form part of the contract. Accordingly, the Agreements and Contract Data, Pricing Data Scope of Work and Site Information, although not attached to this Contract, are specifically incorporated by way of reference and shall form part of the Contract between the parties.

THE CITY OF CAPE TOWN:

Signature:

Name:

Capacity:

Date:

Witness 1:

Witness 2:

[redacted]

SUPPLIER :

Signature:

Name:

Capacity:

Date:

Witness 1:

Witness 2:

[redacted]

[redacted]

[redacted]

ANNEXURE A: GENERAL CONDITIONS OF CONTRACT

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

TABLE OF CLAUSES

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.

[redacted]

1.2 'Contract' means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 'Contract price' means the price payable to the supplier under the contract for the full and proper performance of his or her contractual obligations.

1.4 'Corrupt practice' means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 'Countervailing duties' are imposed in cases in which an enterprise abroad is subsidised by its government and encouraged to market its products internationally.

1.6 'Country of origin' means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 'Day' means calendar day.

1.8 'Delivery' means delivery in compliance with the conditions of the contract or order.

1.9 'Delivery ex stock' means immediate delivery directly from stock actually on hand.

1.10 'Delivery into consignee's store or to his site' means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 'Dumping' occurs when a private enterprise abroad markets its goods on its own initiative in the RSA at lower prices than that of the country of origin, and which action has the potential to harm the local industries in the RSA.

1.12 'Force majeure' means an event beyond the control of the supplier, not involving the supplier's fault or negligence, and not foreseeable. Such events may include, but are not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 'Fraudulent practice' means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 'GCC' means the General Conditions of Contract.

1.15 'Goods' means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 'Imported content' means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and
which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 'Local content' means that portion of the bidding price which is not included in the imported content, provided that local manufacture does take place.

1.18 'Manufacture' means the production of products in a factory using labour, materials, components and machinery, and includes other, related value-adding activities.

1.19 'Order' means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 'Project site', where applicable, means the place indicated in bidding documents.

1.21 'Purchaser' means the organisation purchasing the goods.

1.22 'Republic' means the Republic of South Africa.

1.23 'SCC' means the Special Conditions of Contract.

1.24 'Services' means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance, and other such obligations of the supplier covered under the contract.

1.25 'Written' or 'in writing' means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders, including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

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

[redacted]

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:

[redacted]

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

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

8. Inspections, tests and analyses

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

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

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

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

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

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

8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier, who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

[redacted]

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

13.1 The supplier may be required to provide any or all of the following services, including additional services (if any) specified in the SCC:

(a) performance or supervision of on-site assembly, and/or commissioning of the supplied goods;

(b) furnishing of tools required for the assembly and/or maintenance of the supplied goods;

(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

[redacted]

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

14. Spare parts

14.1 As specified in the SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:

(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications), or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for 12 (twelve) months after the goods, or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for 18 (eighteen) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the SCC.

15.3 The purchaser shall notify the supplier promptly, in writing, of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in the SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in the SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

[redacted]

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in the SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of any other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than 30 (thirty) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in the SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices tendered by the supplier in his bid, with the exception of any price adjustments authorized in the SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract Amendments

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

19. Assignment

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

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during the performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly
notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his or her discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

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

[redacted]

21.4 The right is reserved to procure, outside of the contract, small quantities of supplies; or to have minor essential services executed if an emergency arises, or the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in
substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and, without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
(b) if the supplier fails to perform any other obligation(s) under the contract; or
(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

[redacted]

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than 14 (fourteen) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated 14 (fourteen) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period of not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction, and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if, and to

[redacted]

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.

[redacted]

29. Governing language

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

30. Applicable Law

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

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail, and any other notice to him shall be posted by ordinary mail, to the address furnished in his bid or to the address notified later by him in writing; and such posting shall be deemed to be proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and Duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, licence fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34 Prohibition of Restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act, Act 89 of 1998, as amended, an agreement between or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has/have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act, Act 89 of 1998.

[redacted]

34.3 If a bidder(s) or contractor(s) has/have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and/or terminate the contract in whole or part, and/or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding 10 (ten) years and/or claim damages from the bidder(s) or contractor(s) concerned.

[redacted]

ANNEXURE B: SPECIAL CONDITIONS OF CONTRACT

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

1. Definitions

Delete Clause 1.15 and substitute with the following

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

Delete Clause 1.19 and substitute with the following

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

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

<u>3. General Obligations</u>

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.

3.5 The **supplier** shall:

[redacted]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 The **purchaser** shall:

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

[redacted]

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

3.6.3 Take possession of the goods upon delivery by the supplier.

3.6.4 Regularly inspect the goods to establish that it is being delivered in compliance with the contract.

3.6.5 Give any instructions and/or explanations and/or variations to the supplier including any relevant advice to assist the supplier to understand the contract documents.

3.6.6 Grant or refuse any extension of time requested by the supplier to the period stated in clause 10.

3.6.7 Inspect the goods to determine if, in the opinion of the purchaser, it has been delivered in compliance with the contract, alternatively in such a state that it can be properly used for the purpose for which it was intended.

3.6.8 Brief the supplier and issue all documents, information, etc. in accordance with the contract.

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

Add the following after clause 5.4:

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

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

5.6 Publicity and publication
The supplier shall not release public or media statements or publish material related to the services or contract within two (2) years of completion of the services without the written approval of the purchaser, which approval shall not be unreasonably withheld.

5.7 Confidentiality
Both parties shall keep all information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other party.

7. Performance Security

Delete clause 7.1 and replace with the following:

[redacted]

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

8. Inspections, tests and analyses

Delete Clause 8.2 and substitute with the following:

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

10. Delivery and documents

Delete clauses 10.1 and 10.2 and replace with the following:

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The time for delivery of the goods shall be the date as stated on the order.

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).

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

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

15. Warranty

Add to Clause 15.2:

15.2 This warranty for this contract shall remain valid for the duration of the contract after the goods have been delivered.

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 Employer for consideration. Requests for more frequent payments will be considered at the sole discretion of the Employer 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 order, the supplier shall only be entitled to payment for goods actually delivered in terms of the Project Specification and Drawings, or any variations in accordance with clause 18. Any contingency sum included shall be for the sole use, and at the discretion, of the purchaser.

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

17. Prices

Add the following after clause 17.1

Add the following after clause 17.1

17.2 The prices for the goods delivered and services performed shall be subject to contract price adjustment and be adjusted in accordance with **Schedule 8: Contract Price Adjustment**

18. Contract Amendments

[redacted]

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

<u>18. Contract Amendments and Variations</u>

Add the following to clause 18.1:

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

<u>21. Delays in the supplier's performance</u>

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

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

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

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

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

<u>22. Penalties</u>

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 is reflected in the Draft Service Level Agreement (SLA) attached as Annexure 7. These penalties will be finalised on after contract award and be included in the final approved SLA

[redacted]

23. Termination for default

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

23. Termination

Add the following to the end of clause 23.1:

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

Add the following after clause 23.7:

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

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

23.8.2 The parties by mutual agreement terminate the contract.

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

23.9 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.

<u>27. Settlement of Disputes</u>

Amend clause 27.1 as follows:

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

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

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

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

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

[redacted]

enable a settlement.

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

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

28. Limitation of Liability

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

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

Add the following after clause 28.1:

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

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

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

28.3 The supplier and/or its employees, agents, concessionaires, suppliers, sub-contractors or customers shall not have any claim of any nature against the purchaser for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether or not such loss, damages, injury or death is caused through negligence of the purchaser or its agents or employees.

28.4 Notwithstanding anything to the contrary contained in this Contract, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall any party or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever, whether or not the loss was actually foreseen or reasonably foreseeable), sustained by the other party, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.

[redacted]

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.

[redacted]

ANNEXURE C: SUPPORTING SCHEDULES

TENDER NO: 174S/2019/20

Schedule 5: Conflict of Interest Declaration

1. The tenderer shall declare whether it has any conflict of interest in the transaction for which the tender is submitted. (Please mark with X)

YES		NO	X

1.1 If yes, the tenderer is required to set out the particulars in the table below:

N/A

2. The tenderer shall declare whether it has directly or through a representative or intermediary promised, offered or granted:

2.1 any inducement or reward to the CCT for or in connection with the award of this contract; or

2.2 any reward, gift, favour or hospitality to any official or any other role player involved in the implementation of the supply chain management policy. (Please mark with X)

YES		NO	X

If yes, the tenderer is required to set out the particulars in the table below:

N/A

Should the tenderer be aware of any corrupt or fraudulent transactions relating to the procurement process of the City of Cape Town, please contact the following:

the City's anti-corruption hotline at 0800 32 31 30 (toll free)

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the employer of any other remedies available to it.

[redacted]

[redacted]

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

8 PRICING INSTRUCTIONS:

8.1. The Contract Price Adjustment mechanism contained in this schedule is compulsory and binding on all tenderers.

8.2. Failure to complete this schedule or any part thereof may result in the tender offer being declared non-responsive.

8.3. Tenderers 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 may be declared non-responsive.

8.4. Tenderers are not permitted to offer firm prices except as provided for in the Price Schedule, and if the tenderer offers firm prices in contravention of this clause the tender offer shall be declared non-responsive.

8.5. Tenderer's prices will remain fixed for the first twelve (12) month from date of commencement of contract

8.6. Second and Third year prices will be subject to price adjustments in accordance to the Tender's chosen methodology

8.7. All requests for price increases will have to be substantiated before it can be considered.

8.8. Tenderer to indicate methodology of their pricing adjustment:

[redacted]

8.8.A Supplier/Manufacturer Price List Variations

If the contract is subject to variation based on SUPPLIER/MANUFACTURER PRICE LIST VARIATIONS, the following will be applicable:

Tenderers must supply the following documentation when applying for a price variation:

- The price list that the tender was based upon clearly indicating the item numbered according to the tender pricing schedule
- The new price list clearly indicating the item according to the tender pricing schedule from the same supplier/manufacturer from date of tender
- Detailed calculations indicating how the "new" price is established
- Covering letter on a letterhead from contractor requesting the variation
- All documentation to be signed by relevant parties

Prior to the date upon which the price variation would become effective, the effective date of any price increases granted will be at the date when all the above mentioned documentation is submitted. In instances where the contractors price claimed is less than entitled, the lesser price will be accepted. Orders placed prior to

[redacted]

the effective date will not be allowed to be varied. Only the difference in cost will be allowed to be varied and under no circumstances may the contractor increase their profit margin.

In the event of a contactor changing their supplier/manufacturer during the tenure of the contract, any request for price variations will not be considered unless the contractor obtains prior approval from the City.

Process that will be followed:

SUPPLIER/MANUFACTURER PRICE LISTS

- Contractor 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 contractor.
- All purchase orders from the effective date will be generated at the approved contract price.

TENDERS WHO ARE NOT THE MANUFACTURER/SUPPLIER
Note: TENDERERS ARE REQUIRED TO COMPLETE BELOW
Increase using [redacted]

N.B.
The above information must be provided for eac[redacted]
Copies of price lists on which tender prices are based must be enclosed for all items. The items referenced to the Pricing Schedule must be clearly identified on the price list.
Tenderers will be entitled to claim only the difference between the cost of the product at the time of tendering and the new cost. Documentation together with detailed calculations to this effect must be submitted with the request.

8.8.B Consumer Price Index – CPI

Tendered price will be subject to adjustment annually based on the average consumer Price Index (CPI) as follows:

Second year:
Average CPI will be calculated from closure of tender for 12 months, by adding the percentage CPI for the12 months and dividing by 12 months.

Third year
Average CPI will be calculated from the following 12 months, by adding the percentage CPI for 12 months and dividing by 12 months.

8.9 .General

Schedule 8 must be completed in full.

All requests for price variations must be submitted in writing to:

Director: Supply Chain Management, City of Cape Town
P O Box 655, Cape Town, 8000
Or by email to cpa.request@capetown.gov.za

When submitting a claim for contract price adjustment, the Contractor 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.

[redacted] ....

[redacted]

TENDER NO: 174S/2019/20

Schedule 9: Occupational Health and Safety Agreement

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

[redacted] ....

IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 AS [redacted]

[redacted] .... , [redacted]

[redacted] .... [redacted]

[redacted], 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 [redacted]

[redacted] .... [redacted] ....

[redacted] .... [redacted] ....

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.

[redacted]

Witness

for and on behalf of
City of Cape Town

[redacted]

Schedule 10: Certificate of Independent Tender Determination

I, the undersigned, in submitting this tender 174S/2019/20 **SUPPLY, DELIVERY AND INSTALLATION OF NEW BOOK THEFT DETECTION SYSTEMS AND THE MAINTENANCE OF EXISTING BOOK THEFT DETECTION SYSTEMS FOR THE LIBRARY AND INFORMATION DEPARTMENT OF THE CITY OF CAPE TOWN** in response to the tender invitation made by THE CITY OF CAPE TOWN, do hereby make the following statements, which I certify to be tru[redacted]

I certify, on beh[redacted]

That:

1. I have [redacted]
2. I unde[redacted]
3. I am authorised by the tenderer to sign this Certificate, and to submit this tender, on behalf of the tenderer;
4. Each person whose signature appears on this tender has been authorised by the tenderer to determine the terms of, and to sign, the tender on behalf of the tenderer;
5. For the purposes of this Certificate and this tender, I understand that the word 'competitor' shall include any individual or organisation other than the tenderer, whether or not affiliated with the tenderer, who:
   (a) has been requested to submit a tender in response to this tender invitation;
   (b) could potentially submit a tender in response to this tender invitation, based on their qualifications, abilities or experience; and
   (c) provides the same goods and services as the tenderer and/or is in the same line of business as the tenderer.
6. The tenderer has arrived at this tender independently from and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium[1] will not be construed as collusive price quoting.
7. In particular, without limiting the generality of paragraphs 5 and 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   (a) prices;
   (b) geographical area where product or service will be rendered (market allocation);
   (c) methods, factors or formulas used to calculate prices;
   (d) the intention or decision to submit or not to submit a tender;
   (e) the submission of a tender which does not meet the specifications and conditions of the tender; or
   (f) tendering with the intention not to win the contract.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this tender invitation relates.
9. The terms of this tender have not been and will not be disclosed by the tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to tenders and contracts, tenders that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act, Act 89 of 1998, and/or may be reported to the National Prosecuting Authority (NPA) for criminal investigation, and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004, or any other applicable legislation.

[redacted]

([1] Consortium: Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.)

[redacted]

ANNEXURE D: SERVICE LEVEL AGREEMENT

AGREEMENT OVERVIEW

This Agreement represents a Service Level Agreement ("SLA" or "Agreement") between Supplier and Purchaser for the provisioning of services required to support and sustain the Products as per Tender awarded.

This Agreement remains valid until superseded by a revised agreement mutually endorsed by the stakeholders.
This Agreement outlines the parameters of all services covered as they are mutually understood by the primary stakeholders. This Agreement does not supersede current processes and procedures unless explicitly stated herein.

1. GOALS & OBJECTIVES

The **purpose** of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent service support and delivery to the Purchaser by the Supplier.

The **goal** of this Agreement is to obtain mutual agreement for service provision between the Supplier and Purchaser

The **objectives** of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the client.
- Match perceptions of expected service provision with actual service support & delivery.

2. STAKEHOLDERS

The following parties will be used as the basis of the Agreement and represent the **primary** [redacted]

[redacted]")

City of Cape Town Library and Information Services ("Purchaser")

[redacted]

3. PERIODIC REVIEW

This Agreement is valid from the **Effective Date** outlined herein and is valid until further notice. This Agreement should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Agreement will remain in effect.

The **Business Owner** ("Document Owner") is responsible for facilitating regular reviews of this document. Contents of this document may be amended as required, provided mutual agreement is obtained from the primary stakeholders and communicated to all affected parties. The Document Owner will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

Business Owner: City Library and Information Services
Review Period: Annual
Previous Review Date: Not applicable
Next Review Date: 01 July 2022

4. SERVICE AGREEMENT

The following detailed service parameters are the responsibility of the Supplier in the ongoing support of this Agreement.

4.1. *Service Scope*

The following Services are covered by this Agreement;

- Supply, delivery and installation of compatible and complete Book Theft Detection System and devices.
- Supply and installation of replacement parts for the Book Theft Detection System
- Supply of all associated equipment and components
  - Turnstile entry gate
  - Exit gate: pillars
  - Exit gate: locking arm/gate
  - Exit gate: audible alarm
  - Exit gate: base plate
  - Exit gate: counter to record number of people using gate.
  - Sensitizing mechanism
  - Desensitizing mechanism
- The temporary removal of Security systems, (3M or compatible) the storage and reinstallation of systems during renovations (storage at Council premises)
- The temporary removal of Security systems, (3M or compatible) storage and reinstallation of systems during renovations (Storage at tender's premises)
- Repairs and Maintenance of existing 3M system(s) parts with 3M components

[redacted]

(replacements) as well as repair and maintenance of existing turnstiles and ALL exit gate components as well as sensitizers and desensitizers

- Repairs and Maintenance of New security system(s) parts with compatible components (replacements) as well as repair and maintenance of ALL newly installed turnstiles and exit gate components as well as sensitizers and desensitizers

- Regular servicing of Security Systems and all components & equipment associated with the system.

4.2. *Purchaser Requirements*

Purchaser responsibilities and/or requirements in support of this Agreement include:

- Payment for all service and support costs at the agreed interval.
- Reasonable availability of client representative(s) when resolving a service related incident or request.

4.3. *Supplier Requirements*

Supplier responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service related incidents as per Contract and stipulations in this SLA – see section 6 Service Management
- Providing the Purchaser with a Maintenance Schedule for all facilities.
- Appropriate notification to Purchaser for all scheduled maintenance.

4.4. *Service Assumptions*

Assumptions related to in-scope services and/or components include:

4.4.1 Changes to services will be communicated and documented to all stakeholders.

5. SERVICE MANAGEMENT

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

[redacted]

5.1. *Service Availability*

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support: 8:00 A.M. to 5:00 P.M. Monday – Friday
- Telephone support – Saturdays: (not required)
- Onsite assistance guaranteed within **24 hours** during the business week for service difficulties

5.2. *Service Requests*

In support of services outlined in this Agreement, the Supplier will respond to service related incidents and/or requests submitted by the Purchaser within the following time frames:

- o Within 24 hours (during business hours) for issues classified as Service difficulties (Equipment are not working)
- o Within 7 days to deliver a new system to facilities
- o Within 2 days for removal of equipment for storage and reinstallation of stored equipment
- o Within 72 hours for servicing of equipment requests

5.2.1 Penalties:

Description	Definition	Comment	Response Time	Mean Time to Repair (MTTR)	Penalty
Critical Impact Incident	Failure of Security System	Failure of Alarm system	1 hour	5 hours*	5% of monthly charges for every hour after 6 hours
High Impact Incident	Failure of Security System Components	Feet Counter / Desensitizer	1 hour	6 hours*	5% of monthly charges for every hour after 6 hours
Medium Impact Incident	Support	Request for Assistance	1 hour	As per agreed timeframes in section 6 of this document : Service management	2.5% of service request value

o

5.3 Service Expansions

- o Delivery of new system 7 days from date of order

[redacted]

6. FORCE MAJEURE

6.1. If the performance of this Agreement is suspended due to force majeure (any event which makes the performance due by any Party to this Agreement impossible and which is beyond the reasonable control of such Party, e.g. an act of God), such Party shall give the other Party written notice of the condition of force majeure within 5 (five) working days of the date on which the condition of force majeure takes effect, and shall do its utmost to reinstate the performance due in terms of this Agreement in the shortest possible time

6.2. The suspension of performance of this Agreement due to force majeure is restricted to a period of no longer than 30 (thirty) days from the date of commencement of the condition of force majeure.

6.3. If the period of 30 (thirty) days has elapsed, and if the condition of force majeure persists, Either Party shall be entitled to cancel this Agreement with immediate effect and without prejudice to such Party's rights obtained in terms of this Agreement or otherwise.

7 GENERAL

7.1 This agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this agreement.

7.2 No variation or consensual cancellation of this agreement and no addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.

7.3 No waiver of any of the terms and conditions of this agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

7.4 Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

7.5 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

7.6 Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

AGREED AND ACCEPTED BY:

[redacted]

THE CITY OF CAPE TOWN:

Signature:

Name:

Capacity:

Date:

Witness 1:

Witness 2:

[redacted]

[redacted]

Signature:

Name:

Capacity:

Date:

Witness 1:

Witness 2:

[redacted]

[redacted]

ANNEXURE E: PRICING SCHEDULE

ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	Price Excluding VAT	Price Including VAT
1	Supply, delivery and installation of a complete Book Theft Detection System and devices. The system must be compatible with 3M and Tag it tattle-tapes. The system will comprise the following as well as any barrier necessary to prevent people sidestepping the system: Turnstile entry gate Detection devices for exit gate: pillars, locking arm/gate, audible alarm, base plate, counter to record number of people using gate. Sensitising mechanism Desensitising mechanism Installation of 220 volts single-phase power points. Tenders must submit the cost of one system comprising the above equipment and including training .	Each	R 147 876.79	R170 058.31

[redacted]

1a	Supply and installation of replacement parts for the proposed system in Item 1 above: Turnstile entry gate	Each	R 6 786.30	R7 804.25
1b	Detection devices for exit gate: pillars (tenders to price per pillar)	Each	R 51 029.92	R58 684.41
1c	Detection devices for exit gate: locking arm/gate	Each	R 13 783.23	R15 850.71
1d	Detection devices for exit gate: audible alarm	Each	R 1 753.63	R2 016.67
1e	Detection devices for exit gate: base plate	Each	R 14 302.67	R16 448.07
1f	Detection devices for exit gate: counter to record number of people using gate.	Each	R 6 821.00	R7 844.15
1g	Sensitising mechanism	Each	R 29 586.83	R34 024.85
1h	Desensitising mechanism	Each	R 3 480.80	R4 002.92
1i	Temporary removal of system, storage and reinstallation of system during renovations (storage at Council premises)	Each	R 3 500.00	R4 025.00
1j	Temporary removal of system, storage and reinstallation of system during renovations (Storage at tender's premises)	Each	R 4 500.00	R5 175.00
2a	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Turnstile entry gate	Each	R 6 786.30	R7 804.25

[redacted]

2b	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Detection devices for exit gate: pillars (tenderers to price per pillar)	Each	R 51 029.92	R58 684.41
2c	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Detection devices for exit gate: locking arm/gate	Each	R 13 783.23	R15 850.71
2d	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Detection devices for exit gate: audible alarm	Each	R 1 753.63	R2 016.67
2e	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Detection devices for exit gate: base plate	Each	R 14 302.67	R16 448.07

[redacted]

2f	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Detection devices for exit gate: counter to record number of people using gate	Each	R 6 821.00	7 844.15
2g	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Sensitising mechanism	Each	R 29 586.83	R34 024.85
2h	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Desensitising mechanism	Each	R 3 480.80	R4 002.92
2i	Supply, delivery and installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Temporary removal of system, storage and reinstallation of system during renovations (Storage at Council premises)	Each	R 3 500.00	R4 025.00

[redacted]

2j	Supply, delivery and Installation of replacement parts of the current system with 3M components – This is for maintenance purposes only to cater for libraries with the existing 3M detection system: Temporary removal of system, storage and reinstallation of system during renovations (Storage at tenderer's premises)	Each	R 4 500.00	R5 175.00
3a	Repairs to Turnstile entry gate	Each	R 3 773.78	R4 339.85
3b	Repairs to Detection devices for exit gate: pillars (tenderers to price per pillar)	Each	R 7 824.90	R8 998.64
3c	Repairs to Detection devices for exit gate: locking arm/gate	Each	R 2 736.06	R3 146.47
3d	Repairs to Detection devices for exit gate: audible alarm	Each	R 18 232.38	R20 967.24
3e	Repairs to Detection devices for exit gate: base plate	Each	R 14 302.67	R16 448.07
3f	Repairs to Detection devices for exit gate: counter to record number of people using gate	Each	R 2 164.38	R2 489.04
3g	Repairs to Sensitising mechanism	Each	R 7 979.24	R9 176.13
3h	Repairs to Desensitising mechanism	Each	R 3 480.80	R4 002.92
4	Servicing of existing book detection systems.	Each	R 1 700.00	R1 955.00
5a	Temporary removal of system, storage and reinstallation of system during renovations (Storage at Council premises)	Each	R 3 500.00	R4 025.00
5b	Temporary removal of system, storage and reinstallation of system during renovations (Storage at tenderer's premises)	Each	R 4 500.00	R5 175.00
5c	Replacement mat / carpet that goes over the base plate.	Each	R 2 750.00	R3 162.50
5d	Provision of floor cable covers for instances where the power and/ or information (data) cable is not cut into the floor and tiled over.	Each	R 285.00	R327.75
5e	Fixed side partition panels to prevent side openings where installations are a distance from the door)	Each	R 2 883.33	R3 315.83

[redacted]