



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

**MEMORANDUM OF AGREEMENT**

CONCLUDED IN TERMS OF

**TENDER DP6387S/2020/21: PAYMENT OF SAP SOFTWARE LICENCES: ANNUAL  
MAINTENANCE FEES FROM 2022 TO 2027**

MADE AND ENTERED INTO BETWEEN

**CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**  
**“the CITY”**

and

**THE STATE INFORMATION TECHNOLOGY AGENCY**  
**“the Supplier”**

**REGISTRATION NO. - [REDACTED]**

1. **PREAMBLE**

- 1.1 **WHEREAS** Tender Number DP6387S/2020/21 was awarded to the State Information Technology Agency ("SITA"), on **16 August 2021** in line with resolution **SCMB 47/08/21**, for payment of SAP software licences: annual maintenance fees for the City of Cape Town, for a contract period commencing from 1 January 2022 and terminating on 31 December 2027;
- 1.2 **WHEREAS** this agreement shall include license top-ups in accordance with and subject to the terms and conditions recorded herein;
- 1.3 **AND WHEREAS** it is recorded that this Contract will be governed by the provisions of the National Treasury - General Conditions of Contract (revised July 2010), read with the Special Conditions of Contract ("**SCC**") – Appendix 3.

**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 City**"), herein represented by the **Executive Director: Corporate Services** duly authorised hereto;
- 2.2 **The State Information Technology Agency (SITA)**, an Organ of State registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED] with its principal place of business situated in [REDACTED] (**the "Supplier"**), herein represented by its duly authorised representative, [REDACTED] in his capacity as **Interim Managing Director**.

3. **INTERPRETATION**

- 3.1 The headings in this MOA are inserted for reference purpose only and shall in no way govern or effect 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 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 City, 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 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 order of precedence:
- 3.5.1** first, the terms and conditions of the SCC;
  - 3.5.2** second, the terms and conditions of the GCC;
  - 3.5.3** third, Annexures and schedules to this Contract; and
  - 3.5.4** fourth, any other documents incorporated by reference.
- 3.6 The provisions of this Contract supersede and replace the provisions of any previous agreement entered into between the Parties relating to the same subject matter.

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

3.7.1	<b>"MOA"</b>	means this Memorandum of Agreement entered into between the City and the Supplier and shall supersede all agreements previously entered into;
3.7.2	<b>"the parties"</b>	means the Parties to this Agreement referred to in clause 1 and " <b>Party</b> " shall mean either of them;
3.7.3	<b>"the tender"</b>	Means tender number DP6387S/2020/21 for the Payment of SAP software licences: annual maintenance fees for the City of Cape Town;
3.7.4	<b>"the Commencement Date"</b>	Means 1 January 2022, irrespective of the signature date;
3.7.5	<b>"the completion date"</b>	Means 31 December 2027;
3.7.6	<b>"Signature Date"</b>	means the date on which this Agreement is signed by the Party signing last in time; and
3.7.7	<b>"MFMA"</b>	means the <i>Municipal Finance Management Act, 2003 (Act No: 56 of 2003)</i> ;

#### 4. CONTRACT PERIOD

4.1 The Parties agree and record herein that the contract period for the MOA shall commence on the commencement date and terminate on the completion date.

4.2 Unless terminated earlier in accordance with the provisions as set out in the GCC or any other provision in terms of this Contract, this Contract shall commence from 1 January 2022 and will terminate on 31 December 2027.



## **5. MUTUAL GOOD FAITH / CO-OPERATION**

- 5.1 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.
- 5.2 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.

## **6. CONTRACT SUM**

- 6.1 The Parties agree and record herein that the City shall pay to the Supplier the amounts as provided for in Section 6: Pricing Schedule in the tender document (and referenced hereunder), and the Supplier shall accept such payment.
- 6.2 The Supplier shall not be entitled to any other consideration for the rendering of the services other than as provided for in this Contract.

## **7. LIMITATION OF THE CITY'S LIABILITY AND INDEMNITY, REGARDING THIS AGREEMENT**





- 7.1 Without detracting from, and in addition to any of the other indemnities recorded in this Agreement, the Supplier shall be solely liable for and hereby indemnifies and holds the City 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 Contract in terms of this Agreement, including but not limited to the amendment of the Contract Period, unless the claim, charges, damages, costs, action, liability, demands and or/proceedings and expenses are as a result of the direct intention or negligent action by the City.
- 7.2 The Supplier and/or its employees, agents, concessionaires, suppliers, contractors or customers shall not have any claim of any nature against the City 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 provide that the City is not contribute to the loss, damage, injury, loss of profit or death.





## **8. WHOLE AGREEMENT, WAIVER AND VARIATION**

- 8.1 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 City, or their duly appointed representatives. There has been no representation which forms part of this MOA which has not been included herein.
- 8.2 Any relaxation, indulgence or waiver which the City may grant to the Supplier or any condonation by the City of any breach of the terms of this MOA will not become binding on the City. The City 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.
- 8.3 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 City, or their duly appointed representatives.
- 8.4 The Conditions of Tender, returnable schedules and annexures which are required for tender evaluation purposes, shall form part of the contract arising from the invitation to tender. Accordingly, the conditions of tender and relevant returnable schedules, although not attached to this Contract, are specifically incorporated by way of reference and shall form part of the Contract between the parties.
- 8.5 The City may deliver a written notice (an "Opt-Out Notice") to the supplier requesting that it be relieved of its rights and obligations under this Agreement and that the supplier is also relieved of its rights and obligations under this Agreement. Once delivered, the Opt-Out Notice shall be non-revocable, unless the City and the supplier, in their sole discretion, each agree, in writing, to allow the City to revoke its Opt-Out Notice. Following receipt of an Opt-Out Notice, the City shall be relieved of its obligations hereunder and the supplier shall no longer be required to deliver to any products and modules which the City has opted to decommission which were previously required to be delivered under this Agreement by the supplier to the City and the City shall no longer be entitled to receive the licenses included in the opt-out notice.

**THE CITY OF CAPE TOWN:**

Signature:   
Name:   
Capacity: Acting Executive Director: Corporate Services  
Date: 15 December 2021  
Witness 1:   
Witness 2:  Date:

**SUPPLIER :STATE INFORMATION TECHNOLOGY AGENCY**

Signature:   
Name:   
Capacity: Interim Managing Directors  
Date: 17 December 2021  
Witness 1:  Date: 2021/12/1  
Witness 2:  Date: 2021/12/17



APPENDIX 1: AGREEMENTS AND CONTRACT DATA

FORM OF OFFER AND ACCEPTANCE

TENDER DP6387S/2020/21: PAYMENT OF SAP SOFTWARE LICENCES:  
ANNUAL MAINTENANCE FEES

OFFER: (TO BE FILLED IN BY TENDERER):

Required Details (Please provide applicable details in full):

Name of Tendering Entity* ("the tenderer")	State Information Technology Agency
Trading as (if different from above)	

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

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

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.

[REDACTED]  
Signature(s)

[REDACTED]  
Print name(s):  
On behalf of the tenderer (duly authorised)

17 December 2021

Date



**FORM OF OFFER AND ACCEPTANCE (continued)**

**TENDER DP6387S/2020/21: PAYMENT OF SAP SOFTWARE LICENCES:  
ANNUAL MAINTENANCE FEES**

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

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the supplier the amount due in accordance with the conditions of contract. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer 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:

- (7) & (8): Special and General Conditions of Tender
- (5) Price schedule
- 13: Specifications

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 tenderer and the employer 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 tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer 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 employer of one fully completed original copy of this agreement, including the schedule of deviations (if any). The tenderer (now supplier) shall within five working days of the agreement coming into effect notify the employer 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 contractor shall constitute the binding contract between the parties.

The Parties	Employer	Supplier
Business Name	City of Cape Town	State Information Technology Agency
Business Registration	Not applicable	[REDACTED]
Tax number (VAT)	[REDACTED]	[REDACTED]
Physical Address	Civic Centre 12 Hertzog Boulevard Cape Town 8000	[REDACTED]
Accepted contract sum including tax	As per appendix 6: Pricing Schedule	As per appendix 6: Pricing Schedule
Accepted contract duration	6 years	6 years
Signed – who by signature hereto warrants authority	Acting Executive Director: Corporate Services	Interim Managing Director
Name of signatory	[REDACTED]	[REDACTED]
Signed: Date	[REDACTED]	17 December 2021
Signed: Location	cape Town	Pretoria
Signed: Witness	[REDACTED]	[REDACTED]
Name of Witness	[REDACTED]	21.12.2021

**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 tenderer'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 .....

Details .....

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2 Subject .....

Details .....

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3 Subject .....

Details .....

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4 Subject .....

Details .....

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By the duly authorised representatives signing this agreement, the CCT and the tenderer 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 tenderer 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 tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.



## APPENDIX 2: SPECIFICATIONS

	Agreement	Purchase Summary	Summary Description
2.1.1	SLA00 SAP Enterprise Support Agreement 2009	<ul style="list-style-type: none"> <li>• SAP Business Suite 7</li> <li>• SAP ERP 6.0 (from 2008)</li> <li>• SAP CRM 7.0 (from 2008)</li> <li>• SAP SCM 7.0 (from 2008)</li> <li>• SAP SRM 7.0 (from 2008)</li> <li>• SAP PLM 7.0 (from 2008)</li> </ul>	<ul style="list-style-type: none"> <li>• Continuous improvement and innovation</li> <li>• Advanced Support for Enhancement Packages &amp; other SAP software Updates</li> <li>• SAP Support Backbone</li> <li>• Mission Critical Support</li> <li>• Other Component, Mythologies, Content &amp; Community Participation</li> </ul>
2.1.2	SLA00 SAP Initial Licence & Maintenance Agreement Complete	<ul style="list-style-type: none"> <li>• Initial license and maintenance agreement between CoCT and SAP</li> <li>• No mentions of which systems will be used</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement between CoCT and SAP</li> <li>• Specifies what is required when making use of the SAP systems.</li> <li>• Provides boundaries and limitations when using the SAP systems.</li> <li>• Maintenance agreement between CoCT and SAP</li> </ul>
2.1.3	SLA01 Appendix 01 (Initial Licence)	<ul style="list-style-type: none"> <li>• Enterprise Solutions, does not mention any specific systems</li> </ul>	<ul style="list-style-type: none"> <li>• User and maintenance agreement for Enterprise Solutions</li> <li>• The CoCT is entitled to select and combination, number and quantity of: Named users, Software, Documentation, Third party Database, SAP PS propriety Information, Software engines and Supplementary products.</li> </ul>
2.1.4	SLA02 Appendix 02	<ul style="list-style-type: none"> <li>• mySAP Utilities</li> <li>• mySAP Real Estates</li> <li>• mySAP Supply Chain Management</li> <li>• mySAP Project Lifecycle Management</li> <li>• mySAP Human Resource</li> <li>• mySAP Financials</li> <li>• mySAP BI</li> </ul>	<ul style="list-style-type: none"> <li>• Replaces Appendix 1</li> <li>• Provisions of this appendix prevails all other agreements</li> <li>• CoCT Purchased Third Party Database Interface for Oracle and also Named Users, Professional Users and limited professional users</li> <li>• CIC Limited users are only allows to access functionally contained within the CRM</li> </ul>

	<b>Agreement</b>	<b>Purchase Summary</b>	<b>Summary Description</b>
2.1.5	SLA04 Appendix 04 (Product Suite + Users)	<ul style="list-style-type: none"> <li>• mySAP ERP</li> <li>• mySAP HR</li> <li>• 6.1.7mySAP FI</li> <li>• mySAP CRM</li> <li>• mySAP SCM</li> <li>• mySAP SRM</li> <li>• mySAP PLM</li> <li>• SAP Netweaver</li> <li>• mySAP BI</li> <li>• mySAP EP</li> </ul>	<ul style="list-style-type: none"> <li>• Upgraded to the current, Standard, unrestricted mySAP Business Suite Solutions</li> <li>• The Software and optional products the CoCT is licensed to make use of.</li> </ul>
2.1.6	SLA05 Appendix 05 (User Licences)	<ul style="list-style-type: none"> <li>• mySAP Business Suite</li> <li>• mySAP Enterprise portal</li> </ul>	<ul style="list-style-type: none"> <li>• Licences purchased for mySAP Business Suite users.</li> <li>• Licences purchased for mySAP Community Member Enterprise portal Users.</li> <li>• Database License purchased</li> <li>• The licenses purchased fall under standard maintenance services</li> </ul>
2.1.7	SLA06 Appendix 06 - GRC - Ent. Query - Adobe Forms	<ul style="list-style-type: none"> <li>• SAP GRC Access Control Package (Public Sector)</li> <li>• Enterprise Query, Reporting and Analysis Package</li> <li>• Interactive forms based on Adobe -Starter kit</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for the following Industry package:</li> <li>• SAP GRC Access Control Package (Public Sector)</li> <li>• Enterprise Query, Reporting and Analysis Package</li> <li>• Interactive forms based on Adobe 9 (5 Interactive Forms) for external users</li> </ul>
2.1.8	SLA07 Appendix 07 - Strategy Management	<ul style="list-style-type: none"> <li>• SAP Strategy Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for Industry package SAP Strategy Management for employees.</li> </ul>



	<b>Agreement</b>	<b>Purchase Summary</b>	<b>Summary Description</b>
2.1.9	SLA08 Appendix 08 - MAM	<ul style="list-style-type: none"> <li>• Mobile Asset Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for Industry package Mobile Asset Management for users</li> </ul>
2.1.10	SLA09 Appendix 09 - AML for Utilities	<ul style="list-style-type: none"> <li>• SAP AML Integrations for Utilities</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for Industry package SAP AML Integrations for Utilities</li> </ul>
2.1.11	SLA10 Appendix 10 - RE Land Management	<ul style="list-style-type: none"> <li>• SAP Real Estate management, Land Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for Industry package SAP Real Estate management, Land Management</li> </ul>
2.1.12	SLA11 Appendix 11 - BWA & BO Planning	<ul style="list-style-type: none"> <li>• SAP Business Suite users</li> <li>• SAP NetWeaver Business Warehouse Accelerator</li> <li>• SAP Business Objects Planning version for NetWeaver</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• 100 Business Expert Upgrade Users Purchased</li> <li>• Licenses purchased for the following supplementary product:</li> <li>• SAP NetWeaver Business Warehouse Accelerator</li> <li>• SAP Business Objects Planning version for NetWeaver</li> </ul>
2.1.13	SLA13 Appendix 13 - MAM	<ul style="list-style-type: none"> <li>• Mobile Asset Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for use within the SAP Runtime environment only.</li> <li>• Licenses purchased for Industry package Mobile Asset Management for users</li> </ul>

	Agreement	Purchase Summary	Summary Description
2.1.14	SLA14 Order Form14 - Productivity Pack	<ul style="list-style-type: none"> <li>• SAP Productivity Pak by ANCILE</li> <li>• SAP Productivity Pak Help Launch Pad by ANCILE</li> <li>• Productivity Pak Adapter for SAP Solution Manager</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License</li> <li>• Licenses purchased for SAP Productivity Pak by ANCILE (Third Party Software)</li> <li>• SAP Productivity Pak Help Launch Pad by ANCILE (Third Party Software)</li> <li>• Productivity Pak Adapter for SAP Solution Manager</li> </ul>
2.1.15	SLA16 Order Form 16- BWA	<ul style="list-style-type: none"> <li>• SAP NetWeaver Business Warehouse Accelerator</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased SAP NetWeaver BW Accelerator</li> </ul>
2.1.16	SLA17 Order Form17 - SS & TDA	<ul style="list-style-type: none"> <li>• SAP business Suite Professional</li> <li>• SAP Linear Asses management</li> <li>• SAP Extended Sourcing</li> <li>• SAP Event Manager</li> <li>• SAP MII</li> <li>• SAP BCM Multi-Channel</li> <li>• SAP BCM Reporting</li> <li>• SAP BCM IVR</li> <li>• SAP Billing for TC</li> <li>• BA&amp;T SAP Data Services</li> <li>• SAP Application HANA Viewer user</li> <li>• SAP Investigative Case Management PS</li> <li>• SAP Emergency Management for PS</li> <li>• Mobile Application Manager</li> </ul>	<ul style="list-style-type: none"> <li>• Products and Named Users Mentioned is licensed as Unlimited License Term Software.</li> <li>• Unlimited License term Software is licensed as perpetual license- based on the number of Full-time Employees od licenses</li> </ul>
2.1.17	SLA18 Order Form18 - SAP MAU	<ul style="list-style-type: none"> <li>• Mobile Asset Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for Mobile Asset Management for users</li> </ul>



	<b>Agreement</b>	<b>Purchase Summary</b>	<b>Summary Description</b>
2.1.18	SLA19 Order Form 19 - SAP Contact Centre	<ul style="list-style-type: none"> <li>• SAP Contact Centre, e-Channel</li> <li>• SAP Contact Centre, Voice Channel</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Oracle database License for used within the SAP Runtime environment only.</li> <li>• Licenses purchased for SAP Contact Centre, e-Channel</li> <li>• SAP Contact Centre, Voice Channel</li> </ul>
2.1.19	SLA20 Order Form 20 - SAP HANA	<ul style="list-style-type: none"> <li>• SAP HANA, Database Edition for SAP BW</li> <li>• SAP HANA, Database Edition for Applications and BW</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Licenses for SAP HANA, Database Edition for SAP BW – Up p to 10 units</li> <li>• SAP HANA, Database Edition for Applications and BW – Install base</li> </ul>
2.1.20	SLA21 Order Form 21 - SAC	<ul style="list-style-type: none"> <li>• SAP Analytics Cloud BI PRED Public User</li> <li>• SAP ANLSCLOUD storage</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Licenses for SAP SAC</li> <li>• Purchased SAP SAC Storage</li> <li>• Purchased SAP SAC for CS</li> </ul>
2.1.21	SLA22 Order Form 22	<ul style="list-style-type: none"> <li>• SAP Business Suite</li> <li>• SAP GRC Access Control</li> <li>• SAP Enterprise Integration for Work Manager Mobile App</li> <li>• SAP Strategy Management</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased Licenses for:</li> <li>• SAP Business Suite Professional Users</li> <li>• SAP GRC Access Control</li> <li>• SAP Enterprise Integration for Work Manager Mobile App</li> <li>• SAP Strategy Management Professional as well as Standard editions</li> <li>• Terminated Software from Appendix 3, 8, 13 and Order form 18</li> <li>• Terminated Licenses from Appendix 4, 7 and Order form 17</li> </ul>
2.1.22	SLA 23 Order Form 23	<ul style="list-style-type: none"> <li>• SAP Netweaver Business Warehouse Accelerator</li> <li>• SAP Netweaver Identity Management for Employees</li> <li>• SAP Enterprise Intergartion for Work Manager mobile app</li> </ul>	<ul style="list-style-type: none"> <li>• Purchased licenses for top-up user quantities</li> </ul>



## Conditions of Contract

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### APPENDIX 3: SPECIAL CONDITIONS OF CONTRACT

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

#### 1. Definitions

*Delete Clause 1.15 and substitute with the following*

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

*Delete Clause 1.19 and substitute with the following*

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

*Delete Clause 1.21 and substitute with the following:*

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

*Add the following after Clause 1.25:*

1.26 'Supplier' means **State Information Technology Agency**.

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

#### **3. General Obligations**

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



3.2 The parties will be liable to each other arising out of or in connection with any breach of the obligations detailed or implied in this contract, subject to clause 28.

3.3 All parties in a joint venture or consortium shall be jointly and severally liable to the purchaser in terms of this contract and shall carry individually the minimum levels of insurance stated in the contract, if any.

3.4 The parties shall comply with all laws, regulations and bylaws of local or other authorities having jurisdiction regarding the delivery of the goods and give all notices and pay all charges required by such authorities.

3.4.1 The parties agree that this contract shall also be subject to the CCT's Supply Chain Management Policy ('SCM Policy') that was applicable on the date the bid was advertised, **save that if the Employer adopts a new SCM Policy which contemplates that any clause therein would apply to the contract emanating from this tender, such clause shall also be applicable to that contract.** Please refer to this document contained on the CCT's website.

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

3.5 The **supplier** shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 The **purchaser** shall:

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

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

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

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

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

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

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

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

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

*Add the following after clause 5.4:*

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

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

5.6 Publicity and publication

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

5.7 Confidentiality

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

5.8 Intellectual Property

5.8.1 The supplier acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the Employer.

5.8.2 The supplier hereby assigns to the Employer, all Intellectual Property created, developed or otherwise brought into existence by it for the purposes of the contract, unless the Parties expressly agree otherwise in writing.

5.8.3 The supplier shall, and warrants that it shall:

- 5.8.3.1 not be entitled to use the Employer's Intellectual Property for any purpose other than as contemplated in this contract;
- 5.8.3.2 not modify, add to, change or alter the Employer's Intellectual Property, or any information or data related thereto, nor may the supplier produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the Employer;
- 5.8.3.3 not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the Employer;
- 5.8.3.4 comply with all reasonable directions or instructions given to it by the Employer in relation to the form and manner of use of the Employer Intellectual Property, including without limitation, any brand guidelines which the Employer may provide to the supplier from time to time;
- 5.8.3.5 procure that its employees, directors, members and contractors comply strictly with the provisions of clauses 5.8.3.1 to 5.8.3.3 above; unless the Employer expressly agrees thereto in writing after obtaining due internal authority.
- 5.8.4 The supplier represents and warrants to the Employer that, in providing goods, services or both, as the case may be, for the duration of the contract, it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the Employer from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the supplier of any third party's Intellectual Property rights.
- 5.8.5 In the event that the contract is cancelled, terminated, ended or is declared void, any and all of the Employer's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Employer by the supplier and no copies thereof shall be retained by the supplier unless the Employer expressly and in writing, after obtaining due internal authority, agrees otherwise.

## **7. Performance Security**

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

## **8. Inspections, tests and analyses**

*Delete Clause 8.2 and substitute with the following:*

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or

contractor shall be open, at all reasonable hours, for inspection by a representative of the purchaser or an organisation acting on behalf of the purchaser.

## **10. Delivery and documents**

Delete clauses 10.1 and 10.2 and replace with the following:

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

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

## **11. Insurance**

Add the following after clause 11.1:

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

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

- d) Professional indemnity insurance providing cover in an amount of not less than R5 million in respect of each and every claim during the contract period.

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

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

### **15. Warranty**

*Add to Clause 15.2:*

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

### **16. Payment**

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

16.1 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's Director: Expenditure 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.

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

## **17. Prices**

*Add the following after clause 17.1*

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

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

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

Not applicable to this contract

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

17.5.1 Adjustment for variations in rates of exchange:

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

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

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

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

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

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

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

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

17.5.3.2 Adjustment for variations in customs surcharge and customs duty



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

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

#### 17.5.3 Adjustment for variation in labour and material Costs

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

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

### **18. Contract Amendments**

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

### **18. Contract Amendments and Variations**

*Add the following to clause 18.1:*

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

### **20. Subcontracts**

*Add the following after clause 20.1:*

20.2 The supplier shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the supplier.

20.3 Any appointment of a subcontractor shall not amount to a contract between the CCT and the subcontractor, or a responsibility or liability on the part of the CCT to the subcontractor and shall not relieve the supplier from any liability or obligation under the contract.

## **21. Delays in the supplier's performance**

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

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

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

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

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

## **22. Penalties**

**Delete clause 22.1 and replace with the following:**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum as stated herein for each day of the delay until actual delivery or performance.

The penalty for this contract shall be determined as a percentage on the purchase order request total for the service request which failed to adhere to the performance requirements.

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

**23. Termination for default**

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

**23. Termination**

*Add the following to the end of clause 23.1:*

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

*Add the following after clause 23.7:*

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

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

23.8.2 The parties by mutual agreement terminate the contract.

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

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

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

- 23.8.5.1 reports of poor governance and/or unethical behaviour;
- 23.8.5.2 association with known family of notorious individuals;
- 23.8.5.3 poor performance issues, known to the Employer;
- 23.8.5.4 negative social media reports; or
- 23.8.5.5 adverse assurance (e.g. due diligence) report outcomes.

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

**26. Termination for insolvency**

*Delete clause 26.1 and replace with the following:*

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

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

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

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

26.3 The supplier is to note that the planning for this Contract is based on a three-year budget which is subject to change. While the City has every intention to complete the full scope of works, the City reserves the right to reduce or increase the scope of works according to the dictates of the budget, or to terminate this Contract, 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 services carried out in terms of any adjustment to the Scope of Work or, in the case of termination, remuneration and/or reimbursement as described in this contract as amended by the Contract Data.

The City shall conduct periodic reviews of the Contract, at least, once every 3 (three) years in accordance with section 116(1)(b) of the MFMA.

**27. Settlement of Disputes**

*Amend clause 27.1 as follows:*

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

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

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

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

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

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

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

## **28. Limitation of Liability**

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

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

*Add the following after clause 28.1:*

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

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

b) loss of or damage to property;

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

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

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

28.5 Each party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amounts payable.

### **31. Notices**

*Delete clauses 31.1 and 31.2 and replace with the following:*

31.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses specified in the contract and may be given as set out hereunder and shall be deemed to have been received when:

- a) hand delivered – on the working day of delivery
- b) sent by registered mail – five (5) working days after mailing
- c) sent by email or telefax – one (1) working day after transmission

### **32. Taxes and Duties**

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

In this regard, it is the responsibility of the supplier to submit documentary evidence in the form of a valid Tax Clearance Certificate issued by SARS to the CCT at the Supplier Management Unit located within

the Supplier Management / Registration Office, 2<sup>nd</sup> Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5).

*Add the following after clause 32.3:*

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

#### **ADDITIONAL CONDITIONS OF CONTRACT**

*Add the following Clause after Clause 34:*

#### **35. Reporting Obligations.**

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

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## APPENDIX 4: GENERAL CONDITIONS OF CONTRACT

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

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## 1. Definitions

1. The following terms shall be interpreted as indicated:

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

artificial, non-competitive levels and to deprive the bidder of the benefits of free and open competition.

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

## **2. Application**

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



**3. General**

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

**4. Standards**

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

**5. Use of contract documents and information; inspection.**

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for 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.

The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser, and shall be in one of the following forms:

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

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

## **8. Inspections, tests and analyses**

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

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

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

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

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

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

8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier, who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at



the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

## **9. Packing**

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

#### **14. Spare parts**

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

- a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- b) in the event of termination of production of the spare parts:
  - i. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - ii. following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

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

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

- 15.3 The purchaser shall notify the supplier promptly, in writing, of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in the SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in the SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in the SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of any other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than 30 (thirty) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in the SCC.

## **17. Prices**

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

## **18. Contract Amendments**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

## **21. Delays in the supplier's performance**

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during the performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his or her discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure, outside of the contract, small quantities of supplies; or to have minor essential services executed if an emergency arises, or the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and, without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

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



### **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - b) if the supplier fails to perform any other obligation(s) under the contract; or
  - c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than 14 (fourteen) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated 14 (fourteen) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer/Authority will, at the discretion of the Accounting Officer/Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person is or was, in the opinion of the Accounting Officer/Authority, actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within 5 (five) working days of such imposition, furnish the National Treasury with the following information:
- (i) the name and address of the supplier and/or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction;
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

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

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

#### **25. Force majeure**

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

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

#### **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.
- 27.2 If, after 30 (thirty) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - b) the purchaser shall pay the supplier any monies due to the supplier.

## **28. Limitation of Liability**

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

## **29. Governing language**

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

## **30. Applicable Law**

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

### **31. Notices**

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

### **32. Taxes and Duties**

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, licence fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

### **33. National Industrial Participation (NIP) Programme**

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

### **34 Prohibition of Restrictive practices**

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act, Act 89 of 1998, as amended, an agreement between or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has/have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act, Act 89 of 1998.
- 34.3 If a bidder(s) or contractor(s) has/have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and/or terminate the contract in whole or part, and/or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding 10 (ten) years and/or claim damages from the bidder(s) or contractor(s) concerned.

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## APPENDIX 5: SUPPORTING SCHEDULES

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### FINANCIAL INSTITUTIONS

#### LIST OF APPROVED FINANCIAL INSTITUTIONS

The following financial institutions are currently (as at 18 October 2016) approved for issue of contract guarantees to the City:

#### **National Banks:**

ABSA Bank Ltd.  
FirstRand Bank Ltd.  
Investec Bank Ltd.  
Nedbank Ltd.  
Standard Bank of SA Ltd.

#### **International Banks (with branches in SA):**

Barclays Bank plc.  
Citibank n.a.  
Credit Agricole Corporate and Investment Bank  
HSBC Bank plc.  
JP Morgan Chase Bank  
Societe Generale  
Standard Chartered Bank

#### **Insurance companies:**

ABSA Insurance  
Coface s.a.  
Compass Insurance Co.  
Constantia Insurance Co.  
Credit Guarantee Insurance Co.  
Guardrisk Insurance Co.  
Hollard Insurance Company Ltd.  
Home Loan Guarantee Co.  
Infiniti Insurance Limited  
Lombard Insurance  
Mutual & Federal Insurance Co.  
New National Assurance Co.  
Regent Insurance Co.  
Renasa Insurance Company Ltd.  
Santam Limited  
Zurich Insurance Co

**OCCUPATIONAL HEALTH AND SAFETY AGREEMENT**

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

State Information Technology Agency ..(Supplier/Mandatarv/Company/CC Name)

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

I, [REDACTED], representing the State Information Technology Agency 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 Pretoria ..... on the 17th ..... day of December ..... 2021

[REDACTED]  
Witness

[REDACTED]  
Mandatarv

Signed at Cape Town ..... on the 15th ..... day of December ..... 2021

[REDACTED]  
Witness

[REDACTED]  
for and on behalf of  
City of Cape Town



## APPENDIX 6: PRICING SCHEDULES

Service Description	Quantity	PRICE YEAR 1	PRICE YEAR 2	PRICE YEAR 3	PRICE YEAR 4	PRICE YEAR 5	PRICE YEAR 6	Total Amount
mySAP Business Suite	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Business Suite Professional	7740	R15 081 706.39	R15 081 706.39	R15 081 706.39	R15 081 706.39	R15 081 706.39	R15 081 706.39	<b>R90 490 238.33</b>
SAP Business Suite Ltd Professional	3127	R1 881 901.41	R1 881 901.41	R1 881 901.41	R1 881 901.41	R1 881 901.41	R1 881 901.41	<b>R11 291 408.43</b>
SAP Payroll Processing	31000	R891 573.24	R891 573.24	R891 573.24	R891 573.24	R891 573.24	R891 573.24	<b>R5 349 439.45</b>
IS-U Invoicing & Contract Accounting	20000	R82 696.64	R82 696.64	R82 696.64	R82 696.64	R82 696.64	R82 696.64	<b>R496 179.84</b>
mySAP FI Real Estate Mgmt - Resid.Use	1100	R1 240.45	R1 240.45	R1 240.45	R1 240.45	R1 240.45	R1 240.45	<b>R7 442.71</b>
Invoicing & Contract Accounting	1000001	R2 067 415.93	R2 067 415.93	R2 067 415.93	R2 067 415.93	R2 067 415.93	R2 067 415.93	<b>R12 404 495.58</b>
SAP CRM Limited Professional User	600	R1 156 421.54	R1 156 421.54	R1 156 421.54	R1 156 421.54	R1 156 421.54	R1 156 421.54	<b>R6 938 529.21</b>
mySAP PLM's Easy DMS Interface	50	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
Sales/Service Order Processing	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Financial Supply Chain Mgmt.(FSCM 1)	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
e-Recruiting	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Incentive & Commision Mgmt	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Treasury & Risk Mgmt.	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP In-House Cash	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Real Estate Mgmt- Resident Prop Mgmt	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
Real Estate Mgmt - Office, Retail + Ind.	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Tutor - non commercial use	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Tutor - commercial use	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Learning Solution	500	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP RFID Integrated for SAP ERP	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Global Trade Serv. SAP Compliance Mg	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP SPEC2000 for Airlines	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Global Trade Services / Risk Mgmt	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Trade Promotion Management	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
SAP Global Trade Serv. SAP Customs Mgmt	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>
Warranty Management	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	<b>R0,00</b>











Service Description	Quantity	PRICE YEAR 1	PRICE YEAR 2	PRICE YEAR 3	PRICE YEAR 4	PRICE YEAR 5	PRICE YEAR 6	Total Amount
SAP NetWeaver BW Accelerator	40	R364 794.08	R364 794.08	R364 794.08	R364 794.08	R364 794.08	R364 794.08	<b>R2 188 764.50</b>
SAP Productivity Pak by ANCILE	10000	R989 668.68	R989 668.68	R989 668.68	R989 668.68	R989 668.68	R989 668.68	<b>R5 938 012.08</b>
SAP Prod Pak Help Launch Pad by Ancile	10000	R75 351.54	R75 351.54	R75 351.54	R75 351.54	R75 351.54	R75 351.54	<b>R452 109.24</b>
ProduktivtyPak Adapter f. SAP Sol.Man.	1	R37 792.29	R37 792.29	R37 792.29	R37 792.29	R37 792.29	R37 792.29	<b>R226 753.76</b>
SAP App HANA Viewer User	25	R11 263.23	R11 263.23	R11 263.23	R11 263.23	R11 263.23	R11 263.23	<b>R67 579.36</b>
SAP Linear Asset Management	20	R4 805.64	R4 805.64	R4 805.64	R4 805.64	R4 805.64	R4 805.64	<b>R28 833.83</b>
SAP Extended Sourcing	100	R60 070.52	R60 070.52	R60 070.52	R60 070.52	R60 070.52	R60 070.52	<b>R360 423.10</b>
SAP Event Management	10	R150 176.30	R150 176.30	R150 176.30	R150 176.30	R150 176.30	R150 176.30	<b>R901 057.79</b>
SAP Manuf. Integr. + Intell. (SAP MII)	5	R90 105.78	R90 105.78	R90 105.78	R90 105.78	R90 105.78	R90 105.78	<b>R540 634.68</b>
SAP Business Comm. Mgmt, multi-channel	300	R504 592.34	R504 592.34	R504 592.34	R504 592.34	R504 592.34	R504 592.34	<b>R3 027 554.06</b>
SAP Business Comm. Mgmt, reporting	300	R18 021.15	R18 021.15	R18 021.15	R18 021.15	R18 021.15	R18 021.15	<b>R108 126.92</b>
SAP Business Comm. Mgmt, voice-only	1	R961.13	R961.13	R961.13	R961.13	R961.13	R961.13	<b>R5 766.77</b>
SAP Billing for TC	6	R720 846.21	R720 846.21	R720 846.21	R720 846.21	R720 846.21	R720 846.21	<b>R4 325 077.28</b>
SAP Business Comm. Mgmt, IVR	60	R39 646.54	R39 646.54	R39 646.54	R39 646.54	R39 646.54	R39 646.54	<b>R237 879.23</b>
SAP Emergency Management for PS	100	R300 352.58	R300 352.58	R300 352.58	R300 352.58	R300 352.58	R300 352.58	<b>R1 802 115.51</b>
SAP Investigative Case Management for PS	5000	R15 044.02	R15 044.02	R15 044.02	R15 044.02	R15 044.02	R15 044.02	<b>R90 254.11</b>
SAP Archiv. by Open Text (Bus.Exp, Prof)	100	R21 024.68	R21 024.68	R21 024.68	R21 024.68	R21 024.68	R21 024.68	<b>R126 148.06</b>
SAP Archiving by Open Text, empl. usage	100	R3 003.52	R3 003.52	R3 003.52	R3 003.52	R3 003.52	R3 003.52	<b>R18 021.13</b>
SAP NetWeaver Process Orchestration	2	R86 501.55	R86 501.55	R86 501.55	R86 501.55	R86 501.55	R86 501.55	<b>R519 009.30</b>
SAP NetWeaver Identity Mgmt f. employees	257	R907 455.71	R907 455.71	R907 455.71	R907 455.71	R907 455.71	R907 455.71	<b>R5 444 734.27</b>
SAP NetWeaver Identity Mgmt f. non-empl.	50	R27 031.73	R27 031.73	R27 031.73	R27 031.73	R27 031.73	R27 031.73	<b>R162 190.39</b>
SAP HANA, Enterprise Ed., up to 10 units	4	R1 885 911.38	R1 885 911.38	R1 885 911.38	R1 885 911.38	R1 885 911.38	R1 885 911.38	<b>R11 315 468.28</b>
BA&T SAP BusObj Predictive Analysis	5	R294 673.72	R294 673.72	R294 673.72	R294 673.72	R294 673.72	R294 673.72	<b>R1 768 042.32</b>
SAP Sybase Event Stream Processor	8	R192 225.65	R192 225.65	R192 225.65	R192 225.65	R192 225.65	R192 225.65	<b>R1 153 353.90</b>
SAP Mobile Platform	5000	R3 003 525.87	R3 003 525.87	R3 003 525.87	R3 003 525.87	R3 003 525.87	R3 003 525.87	<b>R18 021 155.20</b>
SAP Ent Int-Work Manager MobApp	1153	R3 638 374.86	R3 638 374.86	R3 638 374.86	R3 638 374.86	R3 638 374.86	R3 638 374.86	<b>R21 830 249.18</b>
BA&T SAP Data Services	8	R576 676.97	R576 676.97	R576 676.97	R576 676.97	R576 676.97	R576 676.97	<b>R3 460 061.82</b>
BA&T SAP Information Steward	4	R288 338.49	R288 338.49	R288 338.49	R288 338.49	R288 338.49	R288 338.49	<b>R1 730 030.91</b>

Service Description	Quantity	PRICE YEAR 1	PRICE YEAR 2	PRICE YEAR 3	PRICE YEAR 4	PRICE YEAR 5	PRICE YEAR 6	Total Amount
Full Time Equivalent (FTE_SS)	6000	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
Full Time Equivalent (FTE_TDA)	4000	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
SAP Fiori	10000	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
SAP Contact Center, e-channel	60	R83 896.56	R83 896.56	R83 896.56	R83 896.56	R83 896.56	R83 896.56	R503 379.36
SAP Contact Center, voice channel	60	R111 862.08	R111 862.08	R111 862.08	R111 862.08	R111 862.08	R111 862.08	R671 172.48
SAP HANA, RT Applic&BW-inst base,partial	1	R866 227.99	R866 227.99	R866 227.99	R866 227.99	R866 227.99	R866 227.99	R5 197 367.95
SAP Prof and Perf Mgmt, 21-50	30	R2 274 470.70	R2 274 470.70	R2 274 470.70	R2 274 470.70	R2 274 470.70	R2 274 470.70	R13 646 824.19
SAP BPC,v f SAP BW/4HANA (plan), Prof Ed	15	R131 219.46	R131 219.46	R131 219.46	R131 219.46	R131 219.46	R131 219.46	R787 316.76
SAP BPC,v f SAP BW/4HANA (plan), Std Ed	200	R699 837.14	R699 837.14	R699 837.14	R699 837.14	R699 837.14	R699 837.14	R4 199 022.83
SAP HANA, RTed Appl&BW-new/subsq partial	1	R639 038.79	R639 038.79	R639 038.79	R639 038.79	R639 038.79	R639 038.79	R3 834 232.71
SAP BW/4HANA 65-320 units	66	R1 154 731.28	R1 154 731.28	R1 154 731.28	R1 154 731.28	R1 154 731.28	R1 154 731.28	R6 928 387.67
SAP Strategy Management, professional ed	15	R79 309.59	R79 309.59	R79 309.59	R79 309.59	R79 309.59	R79 309.59	R475 857.53
SAP Strategy Management, standard editio	1107	R2 760 871.31	R2 760 871.31	R2 760 871.31	R2 760 871.31	R2 760 871.31	R2 760 871.31	R16 565 227.86
Billing (flat fee contracts)	2000000	R2 009 638.82	R2 009 638.82	R2 009 638.82	R2 009 638.82	R2 009 638.82	R2 009 638.82	R12 057 832.91
Billing (consumption based contracts)	3020000	R3 076 480.69	R3 076 480.69	R3 076 480.69	R3 076 480.69	R3 076 480.69	R3 076 480.69	R18 458 884.15
Cost collector for 3rd party royalties	18	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
Enterprise Supp. f. SAP BusObj portfolio	3	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
Enterprise Support for Sybase	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
RCS package for Enterprise Support Cust.	1	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
SAP Enterprise Support	15	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00	R0.00
Service Management	1960	R813 868.80	R850 492.90	R888 765.08	R928 759.50	R970 553.68	R1 014 228.60	R5 466 668.56
Service Desk Management	240	R18 000.00	R18 810.00	R27 274.50	R28 501.85	R29 784.44	R31 124.74	R153 495.52
<b>Total per Annum Excl VAT</b>		<b>R56 511 786.03</b>	<b>R56 549 220.12</b>	<b>R56 595 956.80</b>	<b>R56 637 178.58</b>	<b>R56 680 255.35</b>	<b>R56 725 270.56</b>	<b>R339 699 667.45</b>
VAT 15%		R8 476 767.90	R8 482 383.02	R8 489 393.52	R8 495 576.79	R8 502 038.30	R8 508 790.58	R50 954 950.12
<b>Total per Annum Incl VAT</b>		<b>R64 988 553.93</b>	<b>R65 031 603.14</b>	<b>R65 085 350.32</b>	<b>R65 132 755.37</b>	<b>R65 182 293.65</b>	<b>R65 234 061.15</b>	<b>R390 654 617.56</b>