



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

TENDER NUMBER:

WS 12-2024/25

TENDER DESCRIPTION:	TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LIQUID OXYGEN AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS
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NAME OF BIDDER:

CSD NUMBER:

VENDOR NUMBER (WHERE APPLICABLE)

Prepared by:
City of Tshwane Metropolitan Municipality
Tshwane House
320 Madiba Street
Pretoria CBD
0002
Tel: 012 358 9999

BID CLOSING DATE

22 JULY 2025

Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: Water and Sanitation

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
WS 12-2024/25	TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LIQUID OXYGEN AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS	Water and Sanitation	Technical enquiries: Sipho Madhlabane (siphomadh@tshwane.gov.za or 012 358 3949)	Not applicable	22 July 2025 at 10:00

THE DOCUMENT IS DOWNLOADABLE ON THE TSHWANE WEBSITE (www.tshwane.gov.za) and on the E-tender portal.

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

“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”

**Tshwane House
320 Madiba Street
Pretoria CBD
0002**

Documents must be deposited in the bid box not later than 10:00 on 22 July 2025

Bidders must contact the following officials for any enquiries:

- Technical enquiries: Sipho Madhlabane (012 358 3949 or siphomadh@tshwane.gov.za)
- Supply chain enquiries: Lukkiet Thobejane-Selowe (012 358 6282 or lukkiet3@tshwane.gov.za)

Bids will remain valid for a period of 90 days after the closing date.

Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.

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VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil or Tippex corrections were made, or any other colour ink. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
 - (a) who is in the service of the state;
 - i. if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - ii. who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.
10. Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorised to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.
11. All MBD documents fully completed and fully signed? By the authorized personnel.
12. False or incorrect declarations on any of the MBD documents will result in the rejection of the bidder.

- 13 It is the responsibility of the bidder to disclose in MBD4 any interest in any other related companies or business whether they are bidding for this contract. Failure to disclose this interest will result in the rejection of the bid.
- 14 Joint Ventures (JV) – (Only applicable when the bidder tender as a joint venture)
- i. Where the bidder bid as a Joint Ventures (JV), the required or relevant documents under administrative requirements must be provided/submitted for all JV parties. (These include MBD4, MBD5, MBD8, MBD 9, CSD and/ or SARS pin, Confirmation that the bidder's municipal rates and taxes are up to date.)
 - ii. In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.
 - iii. It is a condition of this bid that the successful bidder will continue with same Joint Venture (JV) for the duration of the contract, unless prior approval is obtained from City of Johannesburg.
 - iv. JV agreement must be complete, relevant and signed by all parties.

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

Bidder

CERTIFICATE OF AUTHORITY FOR SIGNATORY

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

A. COMPANY

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and to sign any contract resulting from this bid, and any other documents and correspondence in connection with this bid or contract on behalf of the company, must be submitted with this bid.

An example is shown below:

By resolution of the board of directors on 20.....,
Mr/Ms has been duly
authorised to sign all documents in connection with
Bid Number

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER CAPACITY AS

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

2.

B. PARTNERSHIP

The following particulars in respect of every partner must be furnished and signed by every partner:

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

We, the undersigned partners in the business trading as, hereby authorise to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid or contract on our behalf.

.....		
Signature	Signature	Signature

.....		
Date	Date	Date

C. ONE-PERSON BUSINESS

I, the undersigned,, hereby confirm that I am the sole owner of the business trading as

.....	
Signature	Date

D. CLOSE CORPORATION

In the case of a close corporation submitting a bid, a certified copy of the founding statement of such corporation shall be included with the bid with a resolution by its members, authorising a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company.

An example is shown below:

By resolution of the members at the meeting on 20..... at
....., Mr/Ms, whose
signature appears below, has been duly authorised to sign all documents in
connection with Bid Number

SIGNED ON BEHALF OF THE CLOSE CORPORATION:

IN HIS/HER CAPACITY AS:

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

 2.

E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this bid offer in joint venture and hereby authorise Mr/Ms , authorised signatory of the company..... , acting in the capacity of the lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:



Water and Sanitation Department

BID NAME: WS 12 2024/25

**TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) ,
NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY ,
DELIVERY OF LIQUID OXYGEN AND NITROGEN GAS AT THE TEMBA
WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER
TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A
PERIOD OF 3 YEARS.**

BID NUMBER: WS 12 2024/25

1. INTRODUCTION AND PURPOSE

Tender for the installation of Liquid Oxygen and Nitrogen Tanks and other equipment as well as supply and delivery of Liquid Oxygen and Nitrogen Gas at the Temba Water Treatment Works (WTW) and Roodeplaat Water Treatment Works (WTW) for generation of ozone for a period of 3 years.

2. BACKGROUND

Temba Water Treatment Works provides 120 million liters of water per day to the communities of Temba, Hammanskraal and other local Municipalities. The Water Treatment Works (WTW) has faced significant challenges in terms of water quality due to the very poor raw water quality from the Leeuwkraal Dam. These challenges have caused taste, odor and colour problems in the drinking water quality which resulted in numerous complaints from the public. Due to the challenges, the City of Tshwane upgraded the treatment process to include Ozone and assist in improving the quality of water produced to meet SANS 241:2015 standard for drinking water.

Roodeplaat Water Treatment Works provide 60 million liters per day to the communities of Montana, Derdepoort, Kameeldrift. The Water Treatment Works has faced significant challenges in terms of water quality due to the poor raw water quality from Roodeplaat Dam. Due to the challenges, the City of Tshwane upgraded the treatment processes to include Ozone and assist in improving the quality of water produced to meet SANS 241:2015 standard for drinking water.

3. PROJECT SCOPE

The Roodeplaat and Temba Water Treatment Works (WTW) consumes LOX in the manufacturing of ozone.

The tender should make provision for the supply and installation of LOX and Nitrogen storage tanks and all other required equipment, as well as the rental and maintenance of such equipment and the supply of products for a period of 3 years.

The tender further provides for the installation of a second 30 tons LOX tank if so required.

The LOX will comply with the following specifications:

Gas	O ₂	
LOX:		
Oxygen purity	98 - 100	wt%
Nitrogen addition	2.3	
Dew point at 1 bar abs	≤ -65	°C
Oil content	≤ 0.1	Ppm
Contamination: particle size	≤ 0.01	µm
Hydrocarbons	≤ 20	Ppm
Inlet pressure	3 - 8	bar g
Operating pressure	1.2 ^{±0.1}	bar g
Outlet pressure	< 0.8	bar g
Temperature (inlet)	5 - 40	°C
Gas flow, adjustable	31.4 – 314	Nm ³ /h
Maximum mass flow	450	kg/h
Adjustable range of ozone production	20 -100	%
Ozone concentration, adjustable	Up to 14	wt%

4 SPECIFICATIONS

4.1 ITEM 1 – CRYOGENIC LOX AND NITROGEN EQUIPMENT INSTALLATION

4.1.1 Environment and OHS compliance

The supplier shall remain responsible to perform the necessary risk assessments in terms of environmental impact and occupational and health aspects. The installation shall always be in compliant with approved inspectorate authority GNR734 of 15 July 2009 and safety act specifications. The supplier should ensure that the installed tanks are properly earthed using the SANS 10.142-1:2024 STANDARDS

4.1.2 Plinth and fencing details

The supplier will use the constructed or construct new plinths to erect cryogenic cylinder.

4.1.3 Equipment size

4.1.3.1 TEMBA WATER TREATMENT WORKS

The supplier shall supply, install, test and commission the following systems:

Storage supply of bulk liquid oxygen

- 2 x 40 m Oxygen tank (Capacity of 65 Tons liquid oxygen)
- 4 x 40 m Vaporizers (Sufficient for 2200Nm³/hr capacity)
- 1 x Telemetry system
- 1 x Pressure control system
- Stainless steel tank pad piping
- Related ancillary equipment with vaporizers
- Maximum gas consumption 1800 kg /hr
- Maximum pressure 2.8 – 3.2 bar

Storage supply of bulk liquid Nitrogen

- 1 x 20 m Nitrogen Tank liquid (Capacity of 15 tons nitrogen)
- 1 x 20 m Vaporizer (Sufficient for 569 Nm³/hr capacity)
- 1 x Telemetry system
- 1 x Pressure control system
- Stainless steel tank pad piping
- Related ancillary equipment with vaporizers
- Maximum gas consumption 42 kg /hr

4.1.3.2 ROODEPLAAT WATER TREATMENT WORKS

Storage supply of bulk liquid oxygen

- 1 x 30 m Oxygen tank (Capacity of 30 Tons liquid oxygen)
- 2 x 400 kg/hr Vaporizers
- 1 x Telemetry system
- 1 x Pressure control system
- Related ancillary equipment with vaporizers
- Maximum gas consumption 302 kg/hr
- Maximum pressure 2.8 – 3.2 bar

The installation shall be in accordance with ISO9001:2015 or the latest and fully compliant with the requirements of the Occupational Health and Safety Act. Provision was made for a future 30-ton cryogenic LOX tank for Roodeplaat WTW.

4.1.4 Support requirements

The bidder shall submit the tender with the maintenance requirements of the LOX and Nitrogen installation and auxiliary equipment as well as the emergency spares available.

4.1.5 Inspection / servicing / maintenance requirements report

The supplier shall submit an annual report and issue a service certificate of the bulk gas tank and auxiliary equipment and confirm that the following services were executed:

- i Bulk gas tank inspected for leaks.
- ii Seal tank for leaks where necessary
- iii Vaporizer functioning correctly
- iv Service regulators / gas flow meters
- v That the bulk gas tank and auxiliary equipment are according to the Occupational Health and Safety Act including the specifications of a high-risk installation,
- vi Install and maintain for the rental period all Occupational Health and Safety signs including the required colors on gas pipeline as specified by the Occupational Health and Safety Law,
- vii Issue calibration certificates of measuring devices.

4.2 ITEM 2 – SUPPLY AND DELIVERY OF LOX AND NITROGEN

4.2.1 Letter of undertaking or Guarantees

The supplier must submit a written letter of undertaking to guarantee the following:

- i) The supplier shall install a telemetry system that will automatically monitor the level of liquid in the storage tanks. The supplier and City of Tshwane will be alerted by the system when the liquid reaches a certain alarm level.
- ii) Provisions shall be made by the supplier to store and have LOX and Nitrogen available in times of gas shortages, service and/or extensions of LOX plants nationwide.
- iii) A copy of the certificate of analysis certifying that the LOX and Nitrogen has been produced in accordance with this specification and found to conform to the specifications as stipulated in the scope.

4.2.2 Gas Usage

It is estimated that the City of Tshwane (Temba WTW) will require on average approximately 673 000 kg LOX and 16 000 kg Nitrogen per month at the Temba Water Treatment Works for the purpose of ozone generation. The demand for LOX and Nitrogen will be based on Ozone generation and water treatment capacity of 120 Mega liters per day. The City of Tshwane does not, however, bind itself to purchase this or any quantity as the LOX and Nitrogen requirements are dependent on the amount of ozone required to treat the water.

It is estimated that the Municipality's will require on average approximately 120 000 kg LOX per month at the Roodeplaat Water Treatment Works for the purpose of ozone generation. The minimum demand can be as low as 0 – 90 000 kg and as high as 225 000 kg LOX per month based on the ozone production rate at 65 MI/d. The Municipality does not, however, bind itself to purchasing this or any quantity as the LOX requirements are dependent on the amount of ozone required to treat the water.

4.2.3 Gas Storage

The storage capacity (Temba WTW) of 3 days (65 tons) at the maximum LOX consumption is required. The installation shall also be able to vaporize enough LOX to meet the requirements of the ozone-generation equipment under all environmental conditions. The total vaporizing requirements are estimated at 1800 kg/hr Oxygen and 42 kg/hr Nitrogen.

The storage capacity (Roodeplaat WTW) of 3 days (30 tons) at the maximum LOX consumption shall be provided. The installation shall also be able to vaporize enough LOX to meet the requirements of the ozone-generation equipment under all environmental conditions. The total vaporizing requirements are estimated at 400 kg/hr.

4.2.4 Gas Metering

The supplier shall supply a suitable gas metering device to indicate instantaneous and totalized flow of LOX and Nitrogen.

Calibration certificate of the gas metering device must be issued every three months.

4.2.5 Price

The prices tendered shall include the supply and delivery of LOX, Nitrogen and rental of LOX and Nitrogen equipment, over a period of three (3) years, as and when required.

The prices shall be a variable cost. The variable cost shall include the cost of tank rental as well as product and transport of the LOX and Nitrogen product

to site. Annual Price Escalation is applicable for this contract. Latest available SEIFSA indices.

The supplier shall indicate variable costs in the pricing schedule of LOX and Nitrogen.

4.3 ITEM 3 – RENTAL AND MAINTENANCE OF LOX EQUIPMENT

4.3.1 Price

The fixed cost shall include maintenance cost, rental cost of equipment and all legal and other requirements. `

4.3.2 Inspection/Servicing/Maintenance requirements

The supplier shall submit an annual report and issue a service certificate of the bulk gas tank and auxiliary equipment that the following services were executed:

- i Bulk gas tank emptied,
- ii Sealed where necessary,
- iii Vaporizer functioning correctly,
- iv Regulators no leakages,
- v That the bulk gas tank and auxiliary equipment are according to the Occupational Health and Safety Act including the specifications of a high-risk installation,
- vi Install all Occupational Health and Safety signs including the required colors on gas pipelining as specified by the Occupational Health and Safety Act.
- vii Calibration certificates of measuring devices.

4.4 ITEM 4– REMOVAL OF EQUIPMENT AT END OF NEW THREE-YEAR PERIOD

Each tender will specify the removal cost of their equipment after the 3-year period. This price shall include all costs for the removal of plants and equipment and no escalation will be applicable. The City of Tshwane will pay the removal cost directly to the supplier whose contract is about to lapse. If the active contractor is not reappointed, then the contractor must remove all his equipment on or before 7 calendar days starting from the date of the letter of appointment for the newly appointed contractor. If not, the City of Tshwane will appoint a contractor to remove all the equipment, and the exiting contractor will be liable for all cost thereof.

5 EVALUATION CRITERIA

The bid will be evaluated in 4 stages, namely:

Stage 1: Administrative compliance

Stage 2: Mandatory requirements

Stage 3: Functionality

Stage 4: 90/10 Preferential point system

The tender will be awarded to one service provider per Plant.

5.1 Stage 1 (Administrative compliance)

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
a) To enable The City to verify the bidder's tax compliance status, the bidder must provide; • Tax compliance status PIN. - or • Central Supplier Database (CSD)		Tax status must be compliant before the award.
b) A copy of their Central Supplier Database (CSD) registration; or indicate their Master Registration Number / CSD Number;		CSD must be valid.
c) Confirmation that the bidding company's rates and taxes are up to date: Original or copy of Municipal Account Statement of the Bidder (bidding company) not older than 3 months and account must not be in arrears for more than ninety (90) days; or ,signed lease agreement or In case of bidders located in informal settlement, rural areas or areas where they are not required to pay Rates and Taxes a letter from the local councilor confirming they are operating in that area		Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days?
d) In addition to the above, confirmation that all the bidding company's owners / members /		Was a Municipal Account Statement or landlord letter provided for the bidding

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
directors / major shareholders rates and taxes are up to date: • Original or copy of Municipal Account Statement of all the South African based owners / members / directors / major shareholders not older than 3 months and the account/s may not be in arrears for more than ninety (90) days; or a signed lease agreement of owners / members / directors / major shareholders or In case of bidders located in informal settlement, rural areas or areas where they are not required to pay Rates and Taxes a letter from the local councilor confirming they are residing in that area		company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days)?
e) Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorized to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document. NB: Bidders must ensure that the directors, trustees, managers, principal shareholders, or stakeholders of this company, declare any interest in any other related companies or business, whether or not they are bidding for this contract. <u>See Question 3.14 of MBD 4. Failure to declare</u>		All documents fully completed (i.e. no blank spaces)? All documents fully signed by (any director / member / trustee as indicated on the CIPC document, alternatively a delegation of authority would be required? Documents completed in black ink (i.e. no "Tippex" corrections, no pencil, no other colour ink, or non-submission of the MBD forms, will be considered)?

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
<u><i>interest will result in a disqualification</i></u>		
f) Audited Financial Statements for the most recent three (3) years or Audited Financial Statements from date of existence for companies less than three years old. NB: The bidder must submit signed audited annual financial statements for the most recent three years, or if established for a shorter period, submit audited annual financial statements from date of establishment. If the bidder is not required by law to prepare signed annual financial statements for auditing purposes, then the bidder must submit proof that the bidder is not required by law to prepare audited financial statements.		Applicable for tenders above R10m in conjunction with MBD 5) Are Audited financial statements provided (Audited financials must be signed by auditor) Or proof that the bidder is not required by law to prepare audited financial statements.
g) Joint Ventures (JV) – (Only applicable when the bidder tenders as a joint venture) Where the bidder bids as a joint venture (JV), the required or relevant documents as per (a) to (f) above must be provided for all JV parties. In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties. NB: It is a condition of this bid that the successful bidder will continue with the same Joint Venture (JV) for the duration of the contract unless prior approval is obtained from the City.		If applicable. JV agreement provided? JV agreement complete and relevant? Agreement signed by all parties? All required documents as per (i.e. a to f) must be provided for all partners of the JV.

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
h) Bidder attended a compulsory briefing session where applicable		A compulsory briefing register must be signed by the bidder. Bidders will be disqualified should they fail to attend compulsory briefing session
i) Pricing schedule (All items must be quoted for in pricing schedule and if not, all items are quoted the bidder will be disqualified). Unless the tender is awarded per item or per section where the bidder only quoted the items or sections, they are interested in.		Incomplete pricing schedule results in totals being incomparable. Bidder must be disqualified. Bidder will be disqualified should they make corrections on the price schedule without attaching a signature or initialising thereto. Bidder will be disqualified should they use tippex/ correction ink, on the price schedule.

5.2 Stage 2 (Mandatory Requirements)

The following items are not negotiable. Failure to submit the documents below will lead to disqualification.

- 5.2.1 A copy of a certificate by a credible quality authority confirming that the product (LOX) and Nitrogen has been produced in accordance with a recognized quality standard (ISO 9001:2015 or the latest).
- 5.2.2 A comprehensive material (LOX) safety data sheet (MSDS) must be submitted.

- 5.2.3 The tanks meet the requirement equipment regulation of an AIA (Approved Inspectorate Authority) GNR734 of 15 July 2009 issued by Chief Inspector Department of Labor.
- 5.2.4 A written statement under oath that contract / agreement between bidder and supplier /manufacturer that bidder can supply rental tanks and equipment, liquid oxygen and nitrogen to City of Tshwane. Instances where the bidder is the manufacturer such shall be stated in a written statement under oath.
- 5.2.5 Proof in the form of certificate which certifies that manufacture is a member of the South African compressed gases association.

5.3 Stage 3: Functionality

SCORECARD FOR FUNCTIONALITY

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	HIGH POSSIBLE SCORE
Documentary proof of years' experience as a supplier of bulk gas.	• 1-3 years • 4 years and above	3 5	8	40
Verified reference that you have successfully installed number of liquid oxygen and nitrogen tanks and equipment.	• 1-3 number of lox and nitrogen tanks Installation. • From 4 number of lox and nitrogen tanks installation	3 5	8	40
Technical personnel (Technician) (Electrical/Instrumentation) CV's Technical qualification, experience and competence. Submit proof of certified qualification (national diploma or trade certificate) and experience.	1-2 years 3-4 years 5+years	3 4 5	2	10
Technical personnel (Technician) Mechanical (CV's Technical qualification, experience and competence Submit proof of certified qualification (national diploma or trade certificate) and experience.	1-2 years 3-4 years 5+years	3 4 5	2	10

Bids that do not achieve a minimum score of 70 (out of 100) for functionality will not be evaluated further.

5.3 Stage 4 90/10

Price: 90 points

Specific goals: 10 points

SPECIFIC GOALS

- 1) Bidders are required to submit supporting documents for their bids to claim the specific goal points.
- 2) Non-compliance with specific goals will not lead to disqualification but bidders will not be allocated specific goal points. Bidders will score points out of 80 for price only and zero (0) points out of 20 for specific goals.
- 3) Cot shall act against any bidder or person when it detects that the specific goals were claimed or obtained on a fraudulent basis.

The specific goal for this bid is outlined below:

Specific goals	90/10 preference point system	Proof of specific goals to be submitted
BB-BEE score of companies • Level 1 • Level 2 • Level 3 • Level 4 • Level 5 • Level 6 • Level 7 • Level 8 • Non-compliant	• 4 Points • 3.5 Points • 3 Points • 2.5 Points • 2 Points • 1.5 Points • 1 Point • 0.5 Points 0 Points	Valid Certified copy of BBBEE certificate. Sworn Affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate.
EME and/ or QSE	1 Point	Valid Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate
At least 51% of Women-owned companies	1 Point	Certified copy of Identity Document/s and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by People with disability	1 Point	Medical Certificate with doctor's details (Practice Number, Physical Address, and contact numbers) and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)

Specific goals	90/10 preference point system	Proof of specific goals to be submitted
At least 51% owned companies by Youth	1 Point	Certified copy of Identity Document/s and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
Local Economic Participation • City of Tshwane • Gauteng • National	2 Points 1 Point 1 Point	Municipal Account statement/Lease agreement.

6 TYPE OF AGREEMENT REQUIRED

Draft Service Level Agreement attached.

7 VALIDITY PERIOD

The validity period for the tender after closure is 90 days. CoT shall have the right and power to extend any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalized while the quotations/bids are still valid.

8 PRICING SCHEDULE

The tender will be awarded to one service provider per plant. Pricing schedule must be completed in full.

TEMBA WTW

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
1	Supply and installation of two cryogenic LOX storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	Supply and installation cost Per tank	2		R
2	Supply and install Flow mixing control panel including signal for	Supply and installation cost	1		R

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
	level control, flow and dew point. (Telemetry)	Per tank			
3	Supply and installation of one nitrogen tank with one of 42 kg/h vaporizer appurtenance and ancillary equipment	Supply and installation cost	1		R
4	Supply and install 300m length piping (corrosion resistant material such as stainless steel) from oxygen and nitrogen station respectively	Supply and installation cost	1		R
5	Supply and delivery of bulk liquid oxygen (LOX)	Rate of gas kg delivered	1339200 kg		R
6	Supply and delivery of bulk Nitrogen gas	Rate of gas kg delivered	16 000 kg		R
7	Rental and maintenance of TWO 40m oxygen tank (65 tons cryogenic LOX storage tank).	Fixed cost R/ Month	36		R
8	Rental and maintenance of nitrogen storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	Fixed cost R/Month	36		R
9	Removal of all installed tenderer's rental Bulk storage tanks and equipment after the 3year period.	Sum	1		R

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
	Sub Total (excl. VAT)				
	Value Added Tax at 15%				
	Total BID Amount (Sum of Items 1-9)				

SIGNATURE OF TENDERER:

ROODEPLAAT WTW

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
1	Supply and installation of one 30m cryogenic LOX storage tank with TWO of 400kg/hr vaporizers appurtenances and ancillary equipment	Supply and installation cost Per tank	2	R	R
2	Supply and install Flow mixing control panel including signal for level control, flow and dew point. (Telemetry)	Supply and installation cost Per tank	1	R	R
3	Supply and installation of one nitrogen tank with one of 42 kg/h vaporizer appurtenance and ancillary equipment	Supply and installation cost	1		R
4	Supply and install 400m length piping (corrosion resistant material such as stainless steel) from oxygen and nitrogen station respectively	Supply and installation cost	1	R	R
5	Supply and delivery of bulk liquid oxygen (LOX)	Rate of gas kg delivered	1339200 kg		R
6	Supply and delivery of bulk nitrogen	Rate of gas kg delivered	16000 kg		
7	Rental and maintenance of ONE 30m oxygen tank (30 tons cryogenic LOX storage tank).	Fixed cost R/ Month	36		R
8	Rental and maintenance of nitrogen storage tank with TWO of 1800kg/hr vaporizers	Fixed cost R/Month	36		R

Item	Description	Unit	Quantity	Rate	Total Price (excl. VAT)
	appurtenances and ancillary equipment				
9	Removal of all installed tenderer's Bulk storage tanks and equipment after the 3year period.	Sum	1		R
	Sub Total (excl. VAT)				
	Value Added Tax at 15%				
	Total BID Amount (Sum of Items 1-9)				

MATERIAL NUMBERS

<u>TEMBA WTW</u>		
1	installation of two cryogenic LOX storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	3027780
2	install Flow mixing control panel including signal for level control, flow and dew point. (Telemetry)	3027781
3	installation of one nitrogen tank with one of 42 kg/h vaporizer appurtenance and ancillary equipment	3027785
4	install 300m length piping (corrosion resistant material such as stainless steel) from oxygen and nitrogen station respectively	3027787
5	Supply and delivery of bulk liquid oxygen (LOX)	2000000 44552
6	Supply and delivery of bulk Nitrogen gas	2000000 44551
7	Rental and maintenance of TWO 40m oxygen tank (65 tons cryogenic LOX storage tank).	3027788
8	Rental and maintenance of nitrogen storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	3027789
9	Removal of all installed tenderer's rental Bulk storage tanks and equipment aft	3027790
<u>ROODEPLAAT WTW</u>		
1	installation of one 30m cryogenic LOX storage tank with TWO of 400kg/hr vaporizers appurtenances and ancillary equipment	3027791
2	install Flow mixing control panel including signal for level control, flow and dew point. (Telemetry)	3027793
3	installation of one nitrogen tank with one of 42 kg/h vaporizer appurtenance and ancillary equipment	3027794
4	install 400m length piping (corrosion resistant material such as stainless steel) from oxygen and nitrogen station respectively	3027795

5	delivery of bulk liquid oxygen (LOX)	2000000 44554
6	delivery of bulk nitrogen	2000000 44553
7	Rental and maintenance of ONE 30m oxygen tank (30 tons cryogenic LOX storage tank).	3027796
8	Rental and maintenance of nitrogen storage tank with TWO of 1800kg/hr vaporizers appurtenances and ancillary equipment	3027797
9	Removal of all installed tenderer's Bulk storage tanks and equipment after the 3year period	3027798

SIGNATURE OF TENDERER.....

15 MARKET ANALYSIS

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

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

MBD1

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY

BID NUMBER:	WS 12-2024/25	CLOSING DATE:	22 JULY 2025	CLOSING TIME:	10:00
DESCRIPTION	TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LIQUID OXYGEN AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED
IN THE BID BOX SITUATED AT (STREET ADDRESS)

Tshwane House					
Supply Chain Management					
320 Madiba Street					
Pretoria CBD					
0002					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		☐ Yes ☐ No

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER		DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	Sipho Madhlabane
CONTACT PERSON	Lukkiet Thobejane-Selowe	TELEPHONE NUMBER	012 358 3949
TELEPHONE NUMBER	012 358 6282	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	siphomadh@tshwane.gov.za
EMAIL ADDRESS	lukkiet3@tshwane.gov.za		

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.

- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES ☐ NO ☐
- 3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES ☐ NO ☐
- 3.3 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES ☐ NO ☐
- 3.4 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES ☐ NO ☐
- 3.5 IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES ☐ NO ☐

IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

**PRICING SCHEDULE: FIRM PRICES (PURCHASES)**

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid Number
Closing Time	Closing Date

OFFER TO BE VALID FOR DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by:
- At:
.....
- Brand and Model
- Country of Origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
*Delivery: Firm/Not firm
- Delivery basis

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

* Delete if not applicable

PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder	Bid number
Closing Time	Closing Date

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by:
- At:
- Brand and model
- Country of origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
- Delivery: *Firm/Not firm
- ** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- * Delete if not applicable

PRICE ADJUSTMENTS

A. NON-FIRM PRICES SUBJECT TO ESCALATION

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left(D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.
- (1-V) Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
- D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1,D2...etc. must add up to 100%.
- R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
- R1o, R2o = Index figure at time of bidding.
- VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated.....	Index..... Dated.....	Index..... Dated.....
Index..... Dated.....	Index..... Dated.....	Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE



B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

- Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

- Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

ADJUSTMENT PERIODS	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE
1 st Adjustment	After 12 calendar months
2 nd Adjustment	After 24 calendar months

NB: Unless prior approval has been obtained from Supply Chain Management, no adjustment in contract prices will be made

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 3.1 Full Name of bidder or his or her representative:
 - 3.2 Identity Number:
 - 3.3 Position occupied in the Company (director, trustee, hareholder²)
 - 3.4 Company Registration Number:
 - 3.5 Tax Reference Number:
 - 3.6 VAT Registration Number:
 - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
 - 3.8 Are you presently in the service of the state? **YES / NO**
 - 3.8.1 If yes, furnish particulars.

¹ MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES/NO**

3.9.1 If yes, furnish particulars.

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars.

.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

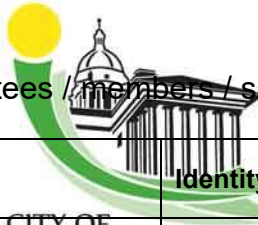
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:

.....

4. Full details of directors / trustees / members / shareholders.



Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder



DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

1 Are you by law required to prepare annual financial statements for auditing? ***YES / NO**

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....
.....

2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days? ***YES / NO**

2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days. ***YES / NO**

2.2 If yes, provide particulars.

.....
.....
.....
.....

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? ***YES / NO**

3.1 If yes, furnish particulars

.....
.....

4.1 Will any portion of goods or services be sourced from outside ***YES / NO**

the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

4.1 If yes, furnish particulars

.....

.....

CERTIFICATION

**I, THE UNDERSIGNED (NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM
IS CORRECT. I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD
THIS DECLARATION PROVE TO BE FALSE.**

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

1.2 **To be completed by the organ of state**

a) The applicable preference point system for this tender is the 80/20 preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	90
SPECIFIC GOALS	10
TOTAL POINTS FOR PRICE AND SPECIFIC GOALS	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to

preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) “**tender**” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) “**price**” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) “**tender for income-generating contracts**” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) “**the Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \end{array}$$

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right) \text{ or } Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

Specific goals	90/10 preference point system	Number of points claimed (90/10 system) (To be completed by the tenderer)
BB-BEE score of companies • Level 1 • Level 2 • Level 3 • Level 4 • Level 5 • Level 6 • Level 7 • Level 8 • Non-compliant	• 4 Points • 3.5 Points • 3 Points • 2.5 Points • 2 Points • 1.5 Points • 1 Points • 0.5 Point • 0 Points	
EME and/ or QSE	1 Point	
At least 51% of Women-owned companies	1 Point	
At least 51% owned companies by People with disability	1 Point	
At least 51% owned companies by Youth	1 Point	
Local Economic Participation • City of Tshwane • Gauteng • National	2 Points 1 Point 1 Point	

N.B For points to be allocated as per above the tenderers will be required to submit proof of documentation as evidence for claims made. Any tenderer that does not submit evidence as stated in the bid document to claim applicable points will be allocated zero points.

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:
.....

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

CONTRACT FORM: PURCHASE OF GOODS/WORKS

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **WS 12 2024/25** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, *viz*
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for specific goals in terms of the Preferential Procurement Regulations 2022;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

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

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

CONTRACT FORM: PURCHASE OF GOODS/WORKS

PART 2 (TO BE FILLED IN BY THE PURCHASER)

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

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION

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

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1
2

DATE:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.7.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM
TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION
MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE
FALSE.**

.....
Signature

.....
Date

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid: **WS 12 2024/25**

TENDER FOR THE INSTALLATION OF LIQUID OXYGEN (LOX) AND NITROGEN TANKS AND OTHER EQUIPMENT AS WELL AS SUPPLY AND DELIVERY OF LIQUID OXYGEN AND NITROGEN GAS AT THE TEMBA WATER TREATMENT WORKS (WTW) AND ROODEPLAAT WATER TREATMENT WORKS (WTW) FOR GENERATION OF OZONE FOR A PERIOD OF 3 YEARS in response to the invitation for the bid made by:

CITY OF TSHWANE MUNICIPALITY

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

³ Joint venture or consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

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

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

1. Application

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

3. General

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

	3.2	With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from 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 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 use of the goods or any part thereof by the purchaser.
7. Performance security	7.1	Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
	7.2	The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
	7.3	The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms: (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 thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
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 organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

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, services	13.1	The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC: (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods; (b) furnishing of tools required for 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 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 twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- | | |
|---|--|
| 15.3 | The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty. |
| 15.4 | Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser. |
| 15.5 | If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract. |
| 16. Payment | <p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.</p> <p>16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in SCC.</p> |
| 17. Prices | 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be. |
| 18. Contract | 18.1 No variation in or modification of the terms of the contract shall be made amendments except by written amendment signed by the parties concerned. |
| 19. Assignment | 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent. |
| 20. Subcontracts | 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract. |
| 21. Delays in the supplier's performance | <p>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.</p> <p>21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.</p> |

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties**
- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
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 amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, (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 the supplier.
28. Limitation of liability	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; 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 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 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, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

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

Herein Represented by:

In his capacity as:

(Duly authorised hereto)

AND

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

Herein Represented by:

In his/her capacity as:

(Duly authorised hereto)

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

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

(Herein referred to as the “**CITY**”)

AND

(Herein referred to as the “**SERVICE PROVIDER**”)

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RECORDAL:

WHEREAS the City requires the supply and installation of liquid oxygen and liquid nitrogen equipment and the supply of its requirements of liquid oxygen and liquid nitrogen at the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant for a 3 (three) year period with effect from or the nearest date thereto;

AND WHEREAS the City wishes to appoint a Service Provider. The Service Provider to supply and install the Equipment and to supply its requirements of the liquid oxygen and liquid nitrogen at and to the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant("Services");

AND WHEREAS the Service Provider wishes to provide such Services;

AND WHEREAS the Service Provider has indicated that it has the necessary expertise, skills and capabilities to provide the Services;

NOW THEREFORE the Parties have agreed to enter into this Agreement, in terms of which, shall provide the Services in the Service Areas thereof, to the City in accordance with the terms and subject to the conditions of this Agreement:

DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them hereunder:

“Agreement” means this Service Level Agreement and shall include the Government Procurement General Conditions of Contract (July 2010) (“GCC”), which is Annexure hereto, any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time. This Service Level Agreement shall constitute Special Conditions of Contract as envisaged by clause 1.23 and clause 2 of the GCC;

“Business Day” means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;

“City” means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;

“Contact Persons” means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 30 and who can be substituted in writing from time to time;

“Contract Price” shall mean the amount reflected as the Contract Price in clause 9 below, and the Appointment Letter dated , and the Payment Schedule attached herewith as Annexure respectively;

“Contract Period” means the Contract Period as reflected in clause 0 below;

“Effective Date” means the date of appointment being or nearest date as per the attached Appointment Letter marked as Annexure.

“Equipment” means the Service Provider’s liquid oxygen and liquid nitrogen equipment that will be installed at the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant and will be used for the storage and distribution of the Gas;

“Gas” means the liquid oxygen and liquid nitrogen that the Service Provider will supply to the City in terms of this Agreement;

“Goods” shall mean, collectively, the Equipment and the Gas;

“Intellectual Property” means patents, designs, know-how, copyright and trademarks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Effective Date or developed after the Effective Date, and includes all further additions and improvements to the Intellectual Property, otherwise pursuant to this Agreement;

“Month” means a calendar month;

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

“Project Site” means the premises on which the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant is situated;

“Services” means the services to be provided by the Service Provider to the City in terms of this Agreement as detailed in clause 0 below;

“Service Provider” means a private company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number;

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

“Subcontract” means any contract or Agreement or proposed contract between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

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

“Tax Invoice” means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and

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

INTERPRETATION

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

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

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

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

and

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

person and vice versa.

The expiry or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement or those provisions which of necessity shall continue to be effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that Agreement shall not apply.

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

Any reference to any legislation is a reference to such legislation as at the Effective Date and as amended or re-enacted from time to time.

If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any Party, then notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision in this Agreement.

In the event of a conflict between this Service Level Agreement and the GCC, this Service Level Agreement shall prevail.

APPOINTMENT

The City hereby appoints the Service Provider, who accepts such appointment, as stated in the Appointment Letter dated , attached herewith as Annexure to provide the Services as set out in the Scope of Work attached herewith as Annexure and in accordance with the terms and subject to the conditions of this Agreement.

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to:

Formalise and regulate the working relationship between the Parties;

Set out the roles and responsibilities of the Parties; and

Define process and procedures to be followed by the Parties in relation to the Services.

RELATIONSHIP

Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under this Agreement is

that of an independent service provider and its status shall in no way be deemed to be that of an agent or employee of the City, for any purpose whatsoever. Neither Party shall have any authority or power to bind the other Party or to contract in the name of the other Party or create a liability against the other Party in any way or for any purpose.

DURATION

This Agreement shall commence on the Effective Date, and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 27 below.

CONTACT PERSON

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

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

The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.

Either Party may substitute its Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.

Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

SCOPE OF GENERAL SERVICES

The Service Provider shall, for the duration of this Agreement, provide the Services set out below:

Supply, installation and maintenance of the Equipment; and

Supply of the City's requirements of the Gas at and for the Temba Treatment Plant and Roodeplaat Water Treatment Plant.

PRICE AND PAYMENT

The City shall pay to the Service Provider a Contract Price in the amount, inclusive of VAT and 10% contingencies as stated in the Appointment Letter, attached herewith as Annexure... and in accordance with the Price Schedule, attached herewith as Annexure

The City shall pay to the Service Provider:

The Gas prices for the liquid oxygen and liquid nitrogen that the Service Provider supplies to the City at the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant.

The Monthly rental in respect of the Equipment as set out in Annexure

The Gas price will be paid to the Service Provider in respect of the quantity of Gas that the Service Provider supplies to the City during a Month. The Equipment rental will be paid to the Service Provider on a Monthly basis for the duration of this Agreement notwithstanding the City not having issued an order for the Equipment rental to the Service Provider.

The Gas prices and Equipment rental will be fixed and firm for the first 12 (twelve) Months of this Agreement. On each anniversary of the Effective Date, the Service Provider will escalate the Gas prices and Equipment rental in accordance with the following formulae by furnishing the City with at least 30 (thirty) days' written notice of such escalation:

In respect of the Gas price:

$$P_1 = P_0 \left(45\% \times \frac{T_1}{T_0} \right) + \left(45\% \times \frac{E_1}{E_0} \right) + \left(10\% \times \frac{L_1}{L_0} \right)$$

Where:

P_1 = New revised price

P_0	=	Base price of proposal
T_1	=	Latest available SEIFSA indices relating to Table L1-A at the date of adjustment
T_0	=	Latest available SEIFSA indices relating to Table L1-A as at October 2018
E_1	=	Latest available SEIFSA indices relating to Table U at the date of adjustment
E_0	=	Latest available SEIFSA indices relating to Table U as at
L_1	=	Latest available SEIFSA indices relating to Table C3 at the date of adjustment
L_0	=	Latest available SEIFSA indices relating to Table C3 as at

In respect of Equipment rental:

$$P_1 = P_0 \left(100\% \times \frac{PPI_1}{PPI_0} \right)$$

Where:

P_1	=	New revised Equipment rental
P_0	=	Base Equipment rental of proposal
PPI_1	=	Latest available SEIFSA indices relating to Table U at the date of adjustment
PPI_0	=	Latest available SEIFSA indices relating to Table U as at

All payments under this Agreement shall be made by electronic funds transfer or other forms of payment as the Parties may agree from time to time, within 30 (thirty) days after the date of receipt by the City of the Service Provider's valid and undisputed Tax Invoices and month-end statements together with the supporting documentation. A Tax Invoice or an amount on a Tax Invoice will be regarded as "undisputed" or "not in dispute" if the City has not notified the Service Provider in writing within 15 (fifteen) days from the date of receipt of the Tax Invoice of any bona fide dispute that it wishes to raise in respect of the Tax Invoice, or an amount on a Tax Invoice.

Should the City timeously notify the Service Provider of a dispute, it shall include in its notice its detailed reasons for such dispute.

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

Where the payment of any valid and undisputed Tax Invoice, or any part of the said Tax Invoice which is not in dispute, is not made by the due date, the Service Provider, without prejudice to any other rights or remedies that the Service Provider has under this Agreement or in law, shall be entitled to:

After furnishing the City with written notice, suspend the Services without incurring any liability of whatever nature until the City has paid all overdue undisputed amounts; and/or

Charge interest on the outstanding amount, at the Bank prime rate of interest in force, for the period from the due date of payment until the outstanding amount is fully paid.

There shall be no interest levied on a Tax Invoice, or an amount thereon, that is in dispute between the Parties.

All Tax Invoices shall be addressed to the City's Contact Person.

All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

Payment will only be deemed to have been effected to the Service Provider once its bankers have confirmed receipt of the payment.

The City shall not be entitled, for any cause whatsoever, to withhold (except in relation to a disputed amount), deduct from or defer any amount due by it to the Service Provider. All payments shall be free of demand, exchange and set off.

To the extent that the payment terms afforded to the City constitute the granting of credit facilities to the City:

The Service Provider reserves the right to suspend or withdraw the City's credit facilities at any time if the City is in default under this Agreement;

The Service Provider reserves the right to reduce or increase the credit limit under the aforesaid credit facilities;

Whatever credit limit is granted to the City will not be deemed to be a limit of the City's indebtedness to the Service Provider under this Agreement.

SERVICE LEVELS

The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's following representations regarding service levels including, *inter alia* -

Capacity allocations to meet the City's estimated requirements of approximately 673 000kg of liquid oxygen and 16 000kg of liquid nitrogen per Month at the Temba Water Treatment Plant for the purpose of ozone generation and 120 000 kg Oxygen per month at Roodeplaar Water Treatment Plant for the purpose of Ozone generation.

All work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the gas industry and shall be executed by the Service Provider in accordance with the provisions of this Agreement.

The Service Provider shall provide suitably qualified and trained employees to provide the Services to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required,

provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the City.

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

WITHHOLDING OF PERFORMANCE

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services or Vehicles from the City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 26 below.

12. Penalty

12.1 Should the service Provider fail to comply with its obligation in terms of this agreement, the city may:

12.1.1 Exercise its right in terms of clause 24 below, alternatively

12.1.2 Impose a penalty on service provider.

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

12.3 Should the City elect to a penalty on the Service Provider, the City shall provide the Service Provider to remedy the default within 7 days from the date of delivery of the notice.

12.4 Should the Service provider fail to remedy the default with 7 days after receiving the notice ,then the City shall be entitle without prejudice to any alternative or additional right of action or remedy available to the City and without further notice impose a penalty ,which penalty shall be deduction of 10% of the monthly invoice for the contract period ,and for the avoidance of doubt, the penalty amount shall be 10% of the monies due for payment the service provider monthly in terms of clause 9 above.

12.5 Should there be a dispute as to whether to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance with clause 26 Below.

13. ACCESS

13.1The City shall allow the Service Provider reasonable access to the Project Site, provided that:

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

13.1.2 The Service Provider adheres to all rules, regulations and instructions applicable at the Project Site that are notified to the Service Provider in writing with sufficient advance notice so that it can comply with same.

13.2 The City shall grant the Service Provider and its employees who perform any aspect of the Services access to the Project Site to perform the Service Provider's obligations in terms of this Agreement.

13.3 The Service Provider and its employees shall at all time when entering the Project Site comply with all rules, laws, regulations and policies of the City which are notified in writing to the Service Provider with sufficient advance notice so that the Service Provider can comply with same.

13.4 Notwithstanding any provision to the contrary contained in this Agreement, the Service Provider's obligation to comply with the rules, laws, regulations and policies of the City ("Rules") shall be subject to the following:

13.4.1 The Rules shall at all times be subject to the provisions of this Agreement; and

13.4.2 In the event that the Rules require the Service Provider to take any steps which are not required in terms of law or which do not form part of the Service Provider's normal practice, the City shall reimburse the Service Provider the reasonable costs that it incurs in complying with such Rules.

14. DELIVERY OF GOODS

14.1 The Service Provider will, subject to being given access to the Project Site, deliver the Gas to the City within 2 (two) Business Days from receipt of the City's written order. In addition, the Equipment is fitted with a telemetry unit to record the level of the Gas in the Equipment. The telemetry unit will send intermittent signals to the

Service Provider's depot and the Service Provider will deliver the Gas based on the information received from the telemetry unit. If the City requires that the Service Provider first be issued with a written order before it can effect delivery of the Gas, the City acknowledges that any delay in issuing the order to the Service Provider will delay delivery of the Gas and in such circumstances, notwithstanding any provision contained in this Agreement to the contrary, the Service Provider shall not be in breach of or default under this Agreement and the City shall have no claim of any nature against the Service Provider for or arising from such delay and any consequences arising therefrom.

14.2 Should the Service Provider be unable to deliver the Gas in accordance with clause 14.1 above, the Service Provider shall inform the City of its inability to deliver the Gas, the reason thereof, and shall provide the City with a reasonable alternative delivery date which in any event shall not be more than 14 (fourteen) days from the original delivery date.

14.3 In the event that the Service Provider is unable to deliver the Gas to the City or the supply of the Gas to the City is significantly delayed the City will be entitled to purchase the quantity of the Gas that the Service Provider is unable to supply or which is significantly delayed from another supplier until such time as the Service Provider can resume supply of that Gas to the City. If the reason for the Service Provider's inability to supply the Gas or for the significant delay in the Service Provider supplying the Gas to the City is not:

14.3.1 A Force Majeure event;

14.3.2 Solely attributable to the default of the Service Provider;

14.3.3 The suspension of deliveries in terms of clause 0 above; or

14.3.4 The City consuming or requiring delivery of an average quantity of the Gas for 3 (three) consecutive days or more that is equal to or exceeds

the quantities set out in clause 0 above, and such inability or delay prejudicially affects the operations of the Temba Water Treatment Plant and Roodeplaat Water Treatment Plant, the City will also be entitled to recover from the Service Provider the surplus between the price that the City paid to the other supplier for the Gas and the price for the same quantity of the Gas that is payable to the Service Provider in terms of this Agreement, provided that such surplus shall not exceed 50% (fifty percent) of the Service Provider's price for that quantity of the Gas.

14.4 Upon delivery of the Gas by the Service Provider, the City's contact person shall sign the delivery document provided by the Service Provider as acknowledgement of receipt of the Gas. Such acknowledgement of receipt shall not constitute an acceptance:

14.4.1 That the Gas complied with the agreed specifications on the delivery date; and/or

14.4.2 Of any terms and conditions of the delivery document.

15. DEFECTIVE GOODS / LATENT PRODUCTS

15.1 The Service Provider undertakes that:

15.1.1 As at the date of delivery the Gas will comply with the agreed specifications; and

15.1.2 The Equipment will be free from defects in respect of design, materials and workmanship that may develop under normal use provided that the City follows the Service Provider's specified procedures in respect of the Equipment and that any damage to the Equipment or any maintenance or repairs are not occasioned by the negligence or any act or omission or error of the City, its employees, its contractors or any other Party.

15.2 In the event that the City realises that the Goods do not comply with the provisions of clause 15.1 above, the City shall inform the Service Provider in writing as soon as it becomes aware of same (but not later than 48 (forty eight) hours after it has or should have become aware of same). In respect of:

- 15.2.1 The Gas, the City shall simultaneously place a new order on the Service Provider for the replacement of such Gas. The Service Provider will deliver the replacement Gas to the City in accordance with clause 14.1 above and will collect samples of the Gas to which the City's complaint relates. The Service Provider will investigate the City's complaint and will notify the City of the outcome of its investigation. If the Gas is found not to comply with the agreed specifications as at the date of delivery, the Service Provider will pass a credit in respect of such Gas to the City's account. If the Gas is found to comply with the agreed specifications as at the date of delivery, the City shall be liable to pay the Service Provider for such Gas;
- 15.2.2 In respect of the Equipment, the Service Provider will attend the Project Site within 1 (one) Business Day after receiving the City's notification to repair or replace the Equipment or any part thereof. Thereafter the Service Provider will investigate the City's complaint and will notify the City of the outcome of its investigation. If the defect to the Equipment was caused by the City not having followed the Service Provider's specified procedures in respect of the Equipment or as a result of the negligence or any act or omission or error of the City, its employees, its contractors or any other party, the City shall be liable to pay the Service Provider for its engineering call-out and its cost of repairs and all charges levied by the Service Provider in respect of the Equipment. In all other circumstances, the City will not be liable for these charges.

16. INSPECTION

16.1 The City may at any time during the currency of this Agreement inspect the service levels of the Service Provider in terms of this Agreement.

16.2 To enable the City to determine whether the Service Provider has complied with the service levels recorded in this Agreement, the Service Provider shall:

16.2.1 Provide the City with such information directly relating to the Services as it may reasonably require;

16.2.2 Allow the City to inspect and take copies of the records of the Service Provider that relate to the Services;

16.2.3 It necessary, allow the City or its authorised representatives to conduct interviews with those of the Service Provider's employees who are directly involved in performance of the Services, subject to reasonable notice being given to the Service Provider.

16.3 The cost of any inspection contemplated in terms of this clause 16 shall be for the account of the City unless the City shows any material irregularity or failure on the part of the Service Provider by way of such inspection.

16.4 The foregoing rights of inspection shall be subject to:

16.4.1 The Service Provider being given at least 14 (fourteen) days' prior written notice of such inspection;

16.4.2 The inspection only taking place during the Service Provider's business hours;

16.4.3 The inspection not interfering with the conduct of the Service Provider's business; and

- 16.4.4 Any information that the City or its representatives have access to by way of such inspection being treated as the Service Provider's confidential information and therefore being subject to the provisions of clause 22 below.

17. TRAINING

If reasonably required, the Service Provider shall after delivery and installation of the Equipment, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the Goods.

18. SERVICE PROVIDER'S WARRANTIES, INDEMNITIES AND LIMIT OF LIABILITY

18.1 Service Warranties

- 18.1.1 The Service Provider warrants that in relation to the Services provided in terms of this Agreement:

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

18.1.1.2 It possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;

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

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

18.1.1.5 It will be solely responsible for the payment of remuneration and associated benefits, if any, of its

Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

18.1.1.6 The use or possession by the City of the Goods will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;

18.1.1.7 It will perform the Services with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards applicable to the gas industry;

18.1.1.8 The Services will in all aspects comply with industry norms and best practice with regard to materials and workmanship;

18.1.1.9 The Service Provider will use and adopt the standards, processes and procedures required under this Agreement;

18.1.1.10 It shall employ suitably qualified and trained employees to provide the Services to the City and it shall allocate employees in accordance with the technical skill and knowledge required;

18.1.1.11 Ensuring that all applicable laws are observed.

18.2 Indemnity

18.2.1 Each Party hereby indemnifies the other Party against any claim which may be brought against the other Party by the first Party's personnel or a third party arising from the first Party's breach of any of the provisions of this Agreement, provided that the other Party shall notify the first Party in writing within a reasonable time, and in any event not

less than 14 (fourteen) Business Days of the other Party becoming aware of any such claim to enable the first Party to take steps to contest it and shall provide the first Party with such reasonable assistance as may be necessary to enable the First Party to defend the claim to the extent only that it is in a position to render such assistance. The first Party may, within 5 (five) Business Days of receipt of written notice from the other Party, elect in writing to contest such a claim in the name of the other Party and shall be entitled to control the proceedings in regard thereto, provided that the first Party indemnifies the other Party against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the other Party as a consequence of the defence of the claim.

18.3 Limit of Liability

Notwithstanding any other provision contained herein to the contrary (including, without being limited to, any indemnity or insurance provision):

18.3.1 The total aggregate liability of the Service Provider under or in terms of this Agreement, whether arising in contract, delict or otherwise, shall not exceed the sum of R1 000 000.00 (one million Rand), provided that this limitation shall not apply to the cost of repairing or replacing defective Equipment should the Service Provider be liable for such cost under this Agreement;

18.3.2 The Service Provider shall not be liable to the City or any other party for any indirect, special, consequential or incidental loss or damages, howsoever arising.

19. THE SERVICE PROVIDER'S PERSONNEL

19.1 Liability for Criminal Acts of Employees

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

19.2 Character of Employees

19.2.1 Due to the confidential nature of certain aspects of the Services and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its reasonable commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of personal integrity and honesty and who have not, to their knowledge, been convicted of any crime.

19.2.2 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services in terms of this Agreement.

19.3 The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so should it obtain the written consent of such employees.

20. STATUTORY AND EMPLOYMENT ISSUES

20.1 The Service Provider shall comply with all employment legislation

20.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

20.1.2 The Service Provider warrants further that it will not contravene of any of the provisions of any such legislation and in the event of such

contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing in respect of the employees who perform the Services, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

20.2 No employment

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all reasonable costs in the event that the City is required to defend a claim, whether civil or employment related, in terms of which the Service Provider's personnel claim to be employees of the City by virtue of this Agreement, instituted against it by the Service Provider's personnel. Should the City defend the matter, the Service Provider hereby indemnifies the City against all reasonable costs which may be incurred by or awarded against the City as a consequence of the defence of the claim.

20.3 Occupational Health and Safety Act, 1993

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City unless such claim is a consequence of any act or omission by the City, its personnel or its contractors or any other person whose activities it is liable for in law.

21. SUB-CONTRACTING

21.1 The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party without the prior written consent of the City.

21.2 In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services in terms of this Agreement, it shall apply to the City in writing for consent to do so.

21.3 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees

payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.

21.4 The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:

21.4.1 The Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;

21.4.2 Such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;

21.4.3 The Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and

21.4.4 No such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

22. CONFIDENTIALITY

22.1 Each Party acknowledges that all information relating to the other Party, its business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities,

copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the other Party in respect of its business (“Confidential Information”), shall remain confidential and shall not be made known unless the other Party has given written consent to do so.

22.2 The information provided by the disclosing Party in the context of this Agreement is Confidential Information and the receiving Party shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

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

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

22.3.2 The information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

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

23. INTELLECTUAL PROPERTY RIGHTS

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

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

- 23.3 The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Intellectual Property Rights of any third party.**
- 23.4 The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.**
- 23.5 In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.**
- 23.6 Should any claim be made against the City by any third party in terms of clause 22.1 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.**
- 23.7 Should any third party succeed in its claim for the infringement of its Intellectual Property Rights in relation to the Services, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:**

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

- 23.7.2 Replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
- 23.7.3 Alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
- 23.7.4 Withdraw the subject of infringement.

24. FORCE MAJEURE

- 24.1 For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, strikes, lockout or any industrial action, flood, storm, fire or any other like forces of nature, which event or circumstances are beyond the reasonable control of the Party claiming Force Majeure.**
- 24.2 In the event of circumstances arising which the other Party believes constitute a Force Majeure (“the Affected Party”) then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period (“Agreed Period”).**
- 24.3 In the event that the Force Majeure has continued for more than 30 (thirty) consecutive days and both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement in writing to the other Party.**

24.4 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such Party shall give notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

25. CESSION AND ASSIGNMENT

Neither Party shall be entitled to cede or assign or transfer in any other way and/or alienate its rights or obligations in terms of this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

26. AMENDMENTS TO THE GCC

26.1 GCC clause 5.4 is amended by inserting the following at the end thereof:

“The foregoing right of inspection and audit is subject to: (i) the supplier must be given at least 14 days’ prior written notice of such inspection or audit; (ii) the inspection or audit shall only take place during the supplier’s business hours; (iii) the inspection or audit shall not interfere with the conduct of the supplier’s business; and (iv) any information that the purchaser has access to by way of such inspection or audit shall be treated as the supplier’s confidential information.”

26.2 GCC clause 7 is deleted in its entirety.

26.3 GCC clause 8.7 is amended by inserting the following at the end thereof:

“The foregoing is subject to the supplier being able to conduct its own tests in respect of the rejected goods. If the supplier’s tests indicate that the goods did not comply with the requirements of the contract, it will credit the purchaser’s account for any charges levied in respect of those goods. However if the tests indicate that the goods did comply with the requirements of the contract, then the purchaser will be liable to pay the supplier the charges levied in respect of those goods and the costs of the supplier’s testing and the supplier will not be liable to compensate the purchaser for supplies it may have purchased from another party.”

26.4 GCC clause 9.2 is amended by deleting “, and in any subsequent instructions ordered by the purchaser” from the end thereof.

26.5 GCC clause 11.1 is replaced in its entirety with the following:

26.5.1 *The purchaser will obtain and maintain suitable insurance to cover the current replacement cost of the Equipment that forms part of the goods for the period that the Equipment is in the possession or under the control of the purchaser. The purchaser shall provide the supplier upon request with proof of such insurance and that the premiums in respect of such insurance are up to date. If the purchaser fails to insure, or adequately insure, the Equipment, it will still be liable to the supplier as provided in the contract in the event that the Equipment is lost and/or damaged and/or destroyed while in its possession or under its control."*

26.6 GCC clauses 15.1 and 15.2 are deleted in their entirety.

26.7 GCC clause 15.4 is amended by inserting "*unless same have been caused by the negligence or any act or omission or error of the purchaser, its employees, its contractors or any other party, in which case the purchaser shall be liable for the supplier's engineering call-outs and costs of repairs, including spare parts for the Equipment*" at the end thereof.

26.8 GCC clause 15.5 is replaced in its entirety with the following:

"Subject to GCC clause 8.7 above, if the supplier, having been notified, fails to remedy the defect(s) within a reasonable period, the purchaser will not be liable to pay the supplier the charges that it levies in respect of the defective goods from the supplier's receipt of the purchaser's notification until the supplier has remedied the defects."

26.9 GCC clause 21.2 is amended by replacing the last sentence thereof with the following:

"As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at its discretion either: (i) extend the supplier's time for performance, in which case the extension shall be ratified by the Parties by amendment of contract; or (ii) cancel the order and source that order from another supplier."

26.10 GCC clauses 21.5 and 21.6 are deleted in their entirety.

26.11 GCC clause 22 is deleted in its entirety.

26.12 GCC clause 23.1 is replaced in its entirety with the following:

*“A party (“**aggrieved party**”), without prejudice to any other remedy for breach of contract, by written notice of default sent to the other party (“**defaulting party**”), may terminate this contract in whole or in part if the defaulting party has engaged in corrupt or fraudulent practices in relation to the conclusion or execution of the contract.”*

26.13 GCC clause 23.2 is deleted in its entirety.

26.14 GCC clause 28.1(a) is amended by deleting “, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser” from the end thereof.

26.15 GCC clause 28.1(b) is deleted in its entirety.

27. BREACH AND TERMINATION

27.1 Should either Party commit a breach of any term of this Agreement (“the Defaulting Party”) then the affected party (“Aggrieved Party”) shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 10 (ten) Business Days and should the Defaulting Party fail to remedy the breach within 10 (ten) Business Days after receipt of the notice, the Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law, to:

27.1.1 Immediately terminate this Agreement in writing and claim damages (which shall include legal costs on an attorney/client scale); or

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

27.2 Termination of this Agreement, for any reason whatsoever, will result in:

27.2.1 The City being obliged to allow the Service Provider to remove the Equipment from the Project Site; and/or

27.2.2 The City paying the Service Provider the current replacement cost of the Equipment not made available to the Service Provider for collection

and the repair cost of any damaged Equipment returned the Service Provider; and/or

27.2.3 The City paying the Service Provider the Equipment rental that would have been payable to the Service Provider for the remaining balance of the 3 (three) year period of this Agreement except if this Agreement was terminated by the City in terms of clause 27.1 above;

27.2.4 Should the City fail to allow the Service Provider to remove the Equipment from the Project Site, in addition and without prejudice to any other claims that the Service Provider may have against the City pursuant thereto, the City being liable, until the Equipment is made available to the Service Provider for collection, to continue paying the Equipment rental to the Service Provider in respect of such Equipment as if this Agreement had not been so terminated and the Service Provider's acceptance of these payments shall not in any manner affect its rights or remedies relating to the termination of this Agreement.

27.3 A certificate signed by any manager of the Service Provider, whose authority, appointment and signature it will not be necessary to prove, that certifies any indebtedness by the City to the Service Provider, the delivery of the Gas to the City, the Service Provider's ownership of the Equipment, the current replacement cost of any outstanding Equipment and any other fact will constitute rebuttable evidence of such indebtedness, delivery, ownership, replacement cost and any other such fact, as the case may be.

28. EARLY TERMINATION

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement. In such circumstances, the City shall be liable to pay the Service Provider the Equipment rental that would have been payable to the Service Provider for the remaining balance of the 3 (three)

year period of this Agreement as well as the amounts referred to in clause 27.2 above, if applicable.

29. DISPUTES

29.1 Save for clause 26 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

29.1.1 The interpretation of the Agreement;

29.1.2 The performance of any of the terms of the Agreement;

29.1.3 Any of the Parties' rights and obligations;

29.1.4 Any procedure to be followed;

29.1.5 The termination or cancellation or breach of this Agreement; or

29.1.6 The rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

29.2 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause 29 shall apply.

29.3 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa (“the Arbitration Act”).

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

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

29.4.2 In accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

29.5 If the arbitration is:

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

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

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

29.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Legal Practice Council, or its successor.

29.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

29.8 The arbitrator may:

- 29.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;
- 29.8.2 Interview and question under oath the Parties or any of their representatives;
- 29.8.3 Decide the dispute according to what he considers just and equitable in the circumstances; and
- 29.8.4 Make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.

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

29.10 The arbitrators award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

29.11 Notwithstanding the provisions of clause 29.1, 28.2, 28.3, 28.4, 28.5, 28.6, and 29.7 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid documents, or for an interdict or other urgent relief, then the Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

29.12 A Party that successfully enforces or defends its rights under this Agreement will be entitled to recover its legal costs from the other

Party on the scale as between attorney and client, including costs of counsel on brief.

29.13 The provisions of this clause 29 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

30. LAWS AND JURISDICTION

30.1 This Agreement shall be governed by and interpreted according to the Laws of the Republic South Africa.

30.2 Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

31. NOTICES AND COMMUNICATIONS

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

31.1.1 THE CITY:

Office of the City Manager
Tshwane House
2nd Floor, Block D
320 Madiba Street
Pretoria, 0001
P O Box 440
Pretoria, 0001
Fax: 086 214 9544
Attention: Sipho Madhlabane
Telephone: 012 358 3994
Email: siphomadh@tshwane.gov.za

31.1.2 THE SERVICE PROVIDER:

31.2 Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.

31.3 Any notice given by any Party to another Party (hereinafter referred to as “the addressee”) which:

31.3.1 Is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

31.3.2 Is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 10th (tenth) day after the date of posting; or

31.3.3 Is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.

31.4 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile or by email.

31.5 Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

32. GENERAL AND MISCELLANEOUS

32.1 SOLE RECORD OF AGREEMENT

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

32.2 NO AMENDMENT EXCEPT IN WRITING

No addition to, variation of, or agreed cancellation of, this Agreement or any part thereof shall be of any force or effect unless in writing and signed by or on behalf of the Parties. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant Party to be of any effect.

32.3 WAIVERS

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

32.4 SURVIVAL OF OBLIGATIONS

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

32.5 APPROVALS AND CONSENTS

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant Party to be of any effect.

32.6 DOCUMENTATION IN ELECTRONIC FORM

The City hereby consents to receiving documents and information including, without being limited to, invoices, credit notes, statements and proof of delivery, from the Service Provider in electronic form, which the City will accept as being the original form of such documents and information.

32.7 DISCLOSURE OF INFORMATION

The City hereby consents to information being supplied to the Service Provider by third parties, including credit bureaux, for the purposes of this Agreement and consents to the furnishing and publication of credit and trading information pertaining to it by the Service Provider to such third parties.

33. EXECUTION

33.1 This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or email shall constitute a valid counterpart for all purposes hereunder.

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

Signed at _____ on this _____ day of _____ 2021.

THE CITY OF TSHWANE

METROPOLITAN MUNICIPALITY

Duly represented by:

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

Signed at _____ on this _____ day of _____ 2021.

For and on behalf of

Duly represented by:.....

In his capacity as:.....

