



REQUEST FOR PROPOSAL [RFP]

Form No: Foskor PROC 017

Revision No: 01

Effective Date: August 2024

FOSKOR [MINING]

an Operating Division of FOSKOR TD

[hereinafter referred to as **Foskor**]

[Registration No. 1951/002918/07]

FOR THE SUPPLY AND DELIVERY OF SERVICE KITS FOR CAT (BARLOW) BRANDED EQUIPMENT AS AND WHEN REQUIRED FOR A PERIOD OF THREE (3) YEARS.

RFP NUMBER : [FOSPHB-RFP-34-25/26]
ISSUE DATE : [8 October 2025]
CLOSING DATE : [28 October 2025]
CLOSING TIME : [12:00pm]
BID VALIDITY PERIOD : [180 days] Business Days from Closing Date (17 July 2026)

NOTE TO BIDDERS: ALL SUBMISSIONS MUST INCLUDE A USB FLASH DRIVE/MEMORY STICK THAT CONTAINS YOUR BID SUBMISSION ON THE CLOSING DATE AND TIME AS A MANDATORY REQUIREMENT. The submitted USB containing the soft copy of the RFP, must be an exact copy or duplicate of the hard copy response. Both submitted hard and soft copies will be reviewed and cross referenced to ensure that no submitted documents are missed. However, in the event that the soft copy submission is not an exact duplication of the hard copy, the hard copy submission will supersede the soft copy and will be used in the evaluation process.

Tenders sent directly to buyers or any other personnel in Foskor by any means of communication will not be accepted.

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Respondent's Signature

Date and Company Stamp

SECTION 1: SBD 1 FORM

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	FOSPHB-RFP-34-25/26	CLOSING DATE:	28 OCTOBER 2025	CLOSING TIME:	12:00PM
DESCRIPTION	FOR THE SUPPLY AND DELIVERY OF SERVICE KITS FOR CAT (BARLOW) BRANDED EQUIPMENT AS AND WHEN REQUIRED FOR A PERIOD OF THREE (3) YEARS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
RESPONDENTS ARE TO SUBMIT THEIR BID RESPONSES IN THE TENDER BOX AT THE RECEPTION OF THE FOLLOWING PHYSICAL ADDRESS AND/OR E-MAIL ADDRESS:					
Physical Address: 27 Selati Road And/or Email: Tenders@foskor.co.za (The size of the email should not exceed 5 MB and it should be in a PDF format.) Phalaborwa					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Nandisa Tsutsu		CONTACT PERSON	Nandisa Tsutsu	
TELEPHONE NUMBER	011 347 0604		TELEPHONE NUMBER	011 347 0604	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	nandisat@foskor.co.za		E-MAIL ADDRESS	nandisat@foskor.co.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELL PHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				☐ YES ☐ NO	
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 BELOW.					

Respondent's Signature

Date and Company Stamp

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 IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
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 VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

Respondent's Signature

Date and Company Stamp

SECTION 2 : NOTICE TO BIDDERS

1. INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent or Bidder**].

DESCRIPTION	FOR THE SUPPLY AND DELIVERY OF SERVICE KITS FOR CAT (BARLOW) BRANDED EQUIPMENT AS AND WHEN REQUIRED FOR A PERIOD OF THREE (3) YEARS.
TENDER ADVERT	Foskor tenders are advertised on the National Treasury e-tender Portal, CIDB i-tender Portal and the Foskor website.
COMMUNICATION	Foskor will publish the outcome of this RFP on the National Treasury e-tender portal, CIDB i-tender portal and the Foskor website within 10 days after the award has been finalised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This request must be directed to the contact person stated in the SBD 1 form. Any addenda to the RFP or clarifications will be published on the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website. Bidders are required to check the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website prior to finalising their bid submissions for any changes or clarifications to the RFP. Foskor will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.
BRIEFING SESSION	No
CLOSING DATE	[12:00] pm on [Tuesday, 28 October 2025] Bidders must ensure that bids are submitted timeously. If a bid is late, it will not be accepted for consideration.
VALIDITY PERIOD	[180 (days)Business Days from Closing Date (17 July 2026)] Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded. Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from the tender process. With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 10.12

Any additional information or clarification will be published on the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website, if necessary.

Respondent's Signature

Date and Company Stamp

2. FORMAL BRIEFING

A formal briefing session **will not be held** but should Respondents have specific queries they should email these to the Foskor employee(s) indicated in paragraph 6 [Communication] below.

3. RFP INSTRUCTIONS

- Please sign documents [sign, stamp and date the bottom of each page] before submitting them. The person or persons signing the submission must be legally authorised by the respondent to do so.
- **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offered. Any exceptions to this statement must be clearly and specifically indicated.
- Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

4. JOINT VENTURES OR CONSORTIUMS

- Respondents who wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV or consortium agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Foskor through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Foskor.
- Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE scorecard (a consolidated B-BBEE Status Level verification certificate) Preference points will be awarded to a bidder for attaining the requirements in accordance with the table indicated in Table 4.1 of the B-BBEE Preference Points Claim Forms.

5. COMMUNICATION

- For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [Nandisa Tsutsu] before 12:00 pm on, 17 October 2025 substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Foskor's response to such a query will be published on the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website.
- After the closing date of the RFP, a Respondent may only communicate with the AC Secretariat [Ntwanano Mabulani], at telephone number [015 789 2151], email [ntwananom@foskor.co.za] on any matter relating to its RFP Proposal.
- Respondents are to note that changes to its submission will not be considered after the closing date.

Respondent's Signature

Date and Company Stamp

- It is prohibited for Respondents to attempt, either directly or indirectly, to canvas any officer or employee of Foskor in respect of this RFP between the closing date and the date of the award of the business.
- Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- Foskor will publish the outcome of this RFP in the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website within 10 days after the award has been finalised. Respondents are required to check the Foskor website for the results of the tender process. All unsuccessful bidders have a right to request Foskor to furnish individual reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form.

6. CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information related to this RFP or the subsequent contract, written approval must be obtained from Foskor.

7. COMPLIANCE

The successful Respondent [hereinafter referred to as the **Supplier**] shall be in full and complete compliance with any and all applicable laws and regulations.

8. EMPLOYMENT EQUITY ACT

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act.

9. DISCLAIMERS

Respondents are hereby advised that Foskor is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Foskor reserves the right to:

- modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;
- reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- disqualify Proposals submitted after the stated submission deadline [28 October 2025];
- award a contract in connection with this Proposal at any time after the RFP's closing date;
- award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- split the award of the contract between more than one Supplier/Service provider, should it at Foskor's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- cancel the bid process;

Respondent's Signature

Date and Company Stamp

- validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Foskor to do so;
- request audited financial statements or other documentation for the purposes of a due diligence exercise;
- not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the tender has been published the outcome of the bid process on the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the Foskor website. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods at their quoted price.

Note that Foskor will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

10. **LEGAL REVIEW**

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Foskor's Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard terms or conditions could result in disqualification.

11. **SECURITY CLEARANCE**

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the Goods/Services and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/ SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

12. **NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE**

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Respondents must register on the CSD prior to submitting their bids. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD.

Respondent's Signature

Date and Company Stamp

13. TAX COMPLIANCE

Respondents must be compliant when submitting a proposal to Foskor and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents' tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.



Respondent's Signature

Date and Company Stamp

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1. BACKGROUND

Foskor (Pty) Ltd. is an opencast mining and beneficiation operation situated in Phalaborwa. The core business of the Phalaborwa operation is the mining and beneficiation of phosphate rock. (The Foskor operation situated in Richards Bay is primarily a producer of phosphoric acid, phosphate-based fertilizers and lower volumes of sulphuric acid)

As part of its mining and operational efforts, Foskor owns and makes use of a large fleet of CAT (Barlow Equipment) branded earth moving machines. As part of its business operations Foskor has fully equipped maintenance workshops where these machines are maintained inhouse. To ensure maximum availability, machines are serviced according to the CAT recommended service intervals.

2. SCOPE OF REQUIREMENTS- (Please refer to Annexure A).

This scope covers the minimum specifications and requirements for the supply of standard CAT service kits for the following models of machines:

- CAT 789D Haul Truck Fleet size 4
- CAT D10T Dozer Fleet size 1
- CAT 140K Grader Fleet size 1

3. GREEN ECONOMY / CARBON FOOTPRINT

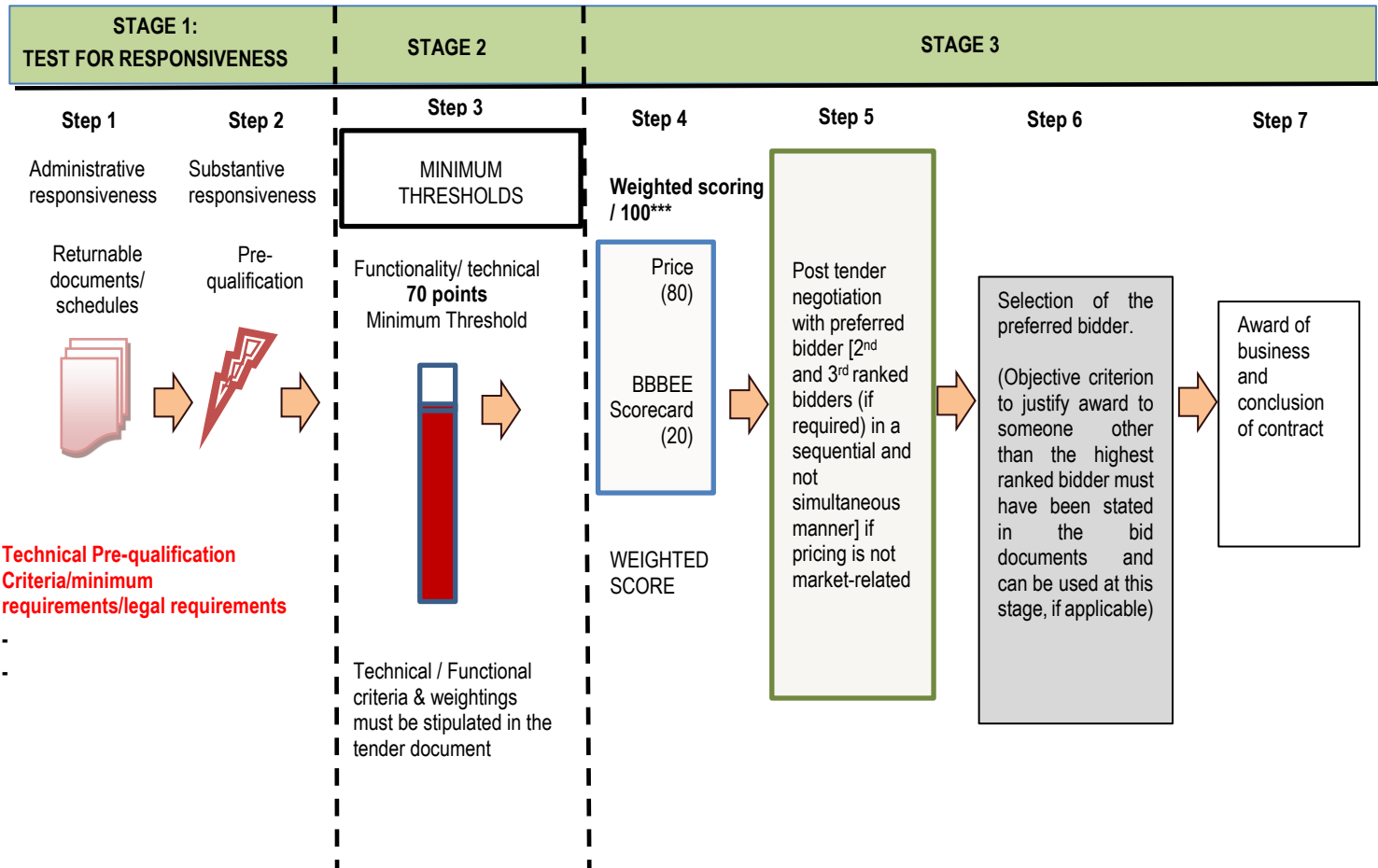
Foskor wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

4. GENERAL SUPPLIER/SERVICE PROVIDER OBLIGATIONS

- 4.1 The Supplier(s) shall be fully responsible to Foskor for the acts and omissions of persons directly or indirectly employed by them.
- 4.2 The Supplier(s) must comply with the requirements stated in this RFP.

5. EVALUATION METHODOLOGY

Foskor will utilise the following methodology and criteria in selecting a preferred Supplier:



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Foskor reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

Respondent's Signature

Date and Company Stamp

5.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
Whether the Bid has been lodged on time	Section 2 paragraph 3
Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 5
Verify the validity of all returnable documents	Section 5
Verify if the Bid document has been duly signed by the authorised respondent	All sections

The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification

5.2 STEP TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Check for substantive responsiveness	RFP Reference
Whether any general and legislation qualification criteria set by Foskor, have been met	All sections including: Section 2 paragraphs, 2.2, 6.
Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule	Section 4
Whether the Bid materially complies with the scope and/or specification given	All Sections
Proof of registration on the National Treasury Central Supplier Database (CSD	Section 2, paragraph 13
Whether any Technical Pre-qualification Criteria/minimum requirements have been met.	Page 2 – Scope of Work Annexure A
Entity's financial stability	

The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.

Respondent's Signature

Date and Company Stamp

5.3 STEP THREE: Minimum Threshold points for Technical Criteria

5.3.1 The test for the Technical and Functional threshold will include the following:

		% WEIGHTING	INFORMATION PROVIDED MUST BE DETAILED, CLEAR AND CONTAIN SUFFICIENT INFORMATION. <u>DO NOT ONLY TICK (✓), USE THE WORD YES OR SIMILAR SHORT STATEMENT</u>									
1.	Provide confirmation that upon receiving an official request, the requested service kit will be delivered to site within 24 hours. Provide exact time in hours/days that a requested service kit will be delivered to site: WEIGHTING: No information = 0.0 Delivery > 5 working days = 0.0 Delivery 3 – 5 working days = 0.5 Delivery 1 - 3 working days = 0.8 Delivery within 1 day/24 hours = 1.0	30%										
2.	Provide confirmation that all spares, parts and components that make up a complete service kit will be packaged together in a single suitable container and clearly marked with machine make and model. WEIGHTING: No information / Not Comply = 0.0 Yes / Comply = 1.0	20%										
3.	Provide confirmation that a full OEM specified service kit will be supplied for each the following machines (Tick appropriate box): <table><tr><td>• CAT 789D Haul Truck</td><td>☐ YES</td><td>☐ NO</td></tr><tr><td>• CAT D10T Dozer</td><td>☐ YES</td><td>☐ NO</td></tr><tr><td>• CAT 140K Grader</td><td>☐ YES</td><td>☐ NO</td></tr></table> WEIGHTING: No information / Not comply / Not supply = 0.0 Yes / Comply / Can supply = 1.0	• CAT 789D Haul Truck	☐ YES	☐ NO	• CAT D10T Dozer	☐ YES	☐ NO	• CAT 140K Grader	☐ YES	☐ NO	25% 15% 10%	
• CAT 789D Haul Truck	☐ YES	☐ NO										
• CAT D10T Dozer	☐ YES	☐ NO										
• CAT 140K Grader	☐ YES	☐ NO										
		100%										

Respondents are to note that Foscok will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.

The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Respondent's Proposal to progress to Step Four for final evaluation

Respondent's Signature

Date and Company Stamp

5.4 STEP FOUR: Evaluation and Final Weighted Scoring

a) Price and TCO Criteria [Weighted score 80 points]:

Evaluation Criteria	RFP Reference
Commercial offer	Section 4
- Commercial discounts¹ - Price adjustment conditions / factors - Exchange rate exposure - Disbursements	Section 4

Foskor will utilise the following formula in its evaluation of Price:

$$PS = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

- P_s = Score for the Bid under consideration
 P_t = Price of Bid under consideration
 P_{min} = Price of lowest acceptable Bid

b) Broad-Based Black Economic Empowerment criteria [Weighted score 20 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

5.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	70

Evaluation Criteria	Final Weighted Scores
Price and Total Cost of Ownership	80
BBBE-E Scorecard	20
TOTAL SCORE:	100

¹ Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment is effected

5.6 STEP FIVE: Post Tender Negotiations (if applicable)

- Respondents are to note that FOSKOR may not award a contract if the price offered is not market-related. In this regard, FOSKOR reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
 - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
 - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should FOSKOR conduct post tender negotiations, Respondents will be requested to provide their best and final offers to FOSKOR based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

5.7 STEP SIX: Objective Criteria

FOSKOR reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. The objective criteria FOSKOR may apply in this bid process include:

- the tenderer:
 - is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
 - is not undergoing a process of being restricted by FOSKOR or other state institution that FOSKOR may be aware of,
 - can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
 - has the legal capacity to enter into the contract
 - is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
 - complies with the legal requirements, if any, stated in the tender data and
 - is able, in the option of the employer to perform the contract free of conflicts of interest.

5.8 STEP SEVEN: Award of business and conclusion of contract

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

Respondent's Signature

Date and Company Stamp

SECTION 4: PRICING AND DELIVERY SCHEDULE

Respondents are to refer to Annexure A- Scope of Work, page 3 – Commercial & Pricing Schedule.

[illegible][illegible]

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

Respondent's Signature

Date and Company Stamp

2. PRICING SCHEDULE : SERVICE KIT CAT D10T DOZER

1000 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

500 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

Respondent's Signature

Date and Company Stamp



RFP NUMBER: [FOSPHB-RFP-34-25/26]

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

Respondent's Signature

Date and Company Stamp

3. PRICING SCHEDULE : SERVICE KIT CAT 140K GRADER

1000 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

500 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

Respondent's Signature

Date and Company Stamp



RFP NUMBER: [FOSPHB-RFP-34-25/26]

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

Respondent's Signature

Date and Company Stamp

4. PRICE ESCALATION FORMULAE	
Months 7-12	
Months 13-18	
Months 19 - 24	
Months 25 - 30	
Months 31 - 36	

Respondents are to note that Foskor will round off final pricing scores to the nearest 2 (two) decimal places.

Notes to Pricing:

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Foskor may not award the contract to that Respondent. Foskor may-
 - (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
 - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;
 - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

5.8.1 If a market-related price is not agreed with the Respondent scoring the third highest points, Foskor must cancel the RFP.
- b) Prices must be quoted in South African Rand exclusive of VAT.
- c) Any disbursement not specifically priced for will not be considered/accepted by Foskor.
- d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive. Pricing schedule must be completed in full, no items should be left blank
- e) The pricing schedule must be completed in full. No items are to be left blank. Where a particular item is not applicable, it must be clearly marked as "N/A" (Not Applicable). Failure to complete all sections of the pricing schedule may result in disqualification of the submission.
- f) Rates proposed must be aligned with the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA);

 Respondent's Signature

 Date and Company Stamp

- g) Quantities given are estimates only. Any orders resulting from this RFP will be on an “as and when required” basis.
- h) Prices are to be quoted on a delivered basis to .
- i) Please note that should you have offered a discounted price(s), Foskor will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- j) Where a Respondent’s price(s) includes imported goods/items, the rate of exchange to be used must be in South African Rands for purposes of determining whether the price is market related or not and must be the currency’s rate published by the South African Reserve Bank on the date of the advertisement of the bid:
Currency rate of exchange utilised: _____
- k) In respect of incoterms conditions, if applicable, please refer to paragraph 25 of the General Bid Conditions which is attached to the RFP as Annexure B
- l) Manufacturing and delivery lead time calculated from the date of receipt of purchase order: _____ weeks.
- m) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for a period of 12 months, subject thereafter to adjustment (i.e. after the initial period of 12 months), utilising the following price index/indices/adjustment formula. [Not to be confused with bid validity period Section 2, clause 1]

1. DISCLOSURE OF CONTRACT INFORMATION

Prices tendered

Respondents are to note that, on award of business, Foskor may be required to publish the tendered prices of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 01 of 2015/2016.

Johannesburg Stock Exchange Debt Listing Requirements

Foskor may also be required to disclose information relating to the subsequent contract i.e. the name of the company, goods/services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

Domestic Prominent Influential Persons (DPIP) OR Foreign Prominent Public Officials (FPPO)

Foskor is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Foskor shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

Respondent’s Signature

Date and Company Stamp

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
Is the Respondent (Complete with a "Yes" or "No")						
A DPIP/FPPO		Closely Related to a DPIP/FPPO		Closely Associated to a DPIP/FPPO		
List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

Respondents declaring a commercial relationship with a DPIP or FPPO are to note that Foskor is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

2. "AS AND WHEN REQUIRED" CONTRACTS

- 2.1 Purchase orders will be placed on the Supplier(s) from time to time as and when Goods/Services are required.
- 2.2 Foskor reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.
- 2.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents will be used as guidelines in establishing lead times and monthly delivery requirements with the Supplier.
- 2.4 Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Foskor. Material supplied earlier than specified may not be paid for or may be returned by Foskor, with the Supplier being held liable for all expenses so incurred, e.g. handling and transport charges.
- 2.5 If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 4 [Pricing and Delivery Schedule]
- 2.6 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

Respondent's Signature

Date and Company Stamp

- 2.7 Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays.

3. RETURN OF SURPLUS GOODS

Respondents are required to indicate whether they have a return policy in place (if so attach a copy):

YES		NO	
-----	--	----	--

Respondents are required to indicate a reasonable timeframe during which Foskor may return any surplus goods:

4. RESPONDENT'S SAMPLES

- 4.1 In this RFP Respondents are required to submit samples of the Goods tendered for by it. The sample(s) must be forwarded on or before the deadline date, which is _____, to the addressee hereunder:

The sample(s) must be clearly marked with the reference number of this RFP and the names and addresses of both the Respondent and the manufacturer.

- 4.2 Failure to submit the sample(s) in due time may result in a Proposal being rejected. Proposals must under no circumstances be included in the package containing a sample(s).

- 4.3 The Respondents must state the following:

Has/have a sample(s) been submitted?	How and to whom forwarded?	Date of dispatch

5. PRE-PRODUCTION SAMPLES/PROTOTYPES

- 5.1 In this RFP, Respondents are required to provide a pre-production sample(s) or prototype(s). The Respondent should state here the time required to deliver the necessary pre-production samples(s) or prototype(s) calculated as from the date of notification of acceptance of its Proposal by Foskor:

- 5.2 NB: Purchase Orders will be placed on the Supplier(s) only after the date of approval of the pre-production sample(s).

- 5.3 State the number of days/weeks/months after which delivery would commence subject to Foskor's approval of the pre-production sample(s) or prototype(s), calculated as from the date of such approval:

Respondent's Signature

Date and Company Stamp

6. MANUFACTURERS

The Respondents must state hereunder the actual manufacturer(s) of the Goods tendered for:

6.1 Local Manufacturer(s):

RFP ITEM NO.	NAME	BUSINESS ADDRESS

6.2 Foreign Manufacturer(s):

RFP ITEM NO.	NAME	BUSINESS ADDRESS

7. INSPECTION DETAILS

The Respondents must state the actual name(s) and address/addresses of the suppliers of the Goods for inspection purposes only:

7.1 Local Manufacturer(s)

RFP ITEM NO.	NAME	BUSINESS ADDRESS

7.2 Foreign Manufacturer(s):

RFP ITEM NO.	NAME	BUSINESS ADDRESS

8. IMPORTED CONTENT

The Respondents must state hereunder the value and percentage of the imported content as well as the country of origin in respect of each item tendered for:

RFP ITEM NO / DESCRIPTION.	VALUE	% COST	COUNTRY OF ORIGIN

Note: Where more than one country is applicable to one item, the Respondents must furnish this information separately.

Respondent's Signature

Date and Company Stamp

9. EXCHANGE AND REMITTANCE

The attention of the Respondents is directed to clause 17 *[Exchange and Remittance]* of the General Bid Conditions. If FOSKOR is requested by the Respondent to effect payment overseas direct to the Respondent's principal or supplier, which is not a registered South African Company please complete the details below, using the rate of exchange published by the South African Reserve Bank 7 [seven] calendar days before the closing date of this RFP:

9.1 ZAR 1.00 [South African currency] being equal to _____ *[foreign currency]*

9.2 _____ % in relation to tendered price(s) to be remitted overseas by FOSKOR

9.3 _____ [Name of country to which payment is to be made]

9.4 Beneficiary details:

Name [Account holder] _____

Bank [Name and branch code] _____

Swift code _____

Country _____

9.5 _____ [Applicable base date of Exchange Rate used]

Respondents are advised that should a contract be awarded for deliveries on an "as and when required" basis, any future remittance(s) to overseas principals/service providers, as instructed above, will be based on an agreed rate of exchange related to the contractual price of the Goods/Services at that time.

Respondents should note that FOSKOR would prefer to receive fixed price offers expressed in South African Rand [ZAR].

Respondent's Signature

Date and Company Stamp

10. RISK

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Foskor pertaining to potential non-performance by the Respondent, in relation to:

10.1 Quality and specification of Goods/Services delivered:

10.2 Continuity of supply:

10.3 Compliance with the Occupational Health and Safety Act, 85 of 1993:

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____



RFP NUMBER: [FOSPHB-RFP-34-25/26]

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We _____
[name of entity, company, close corporation or partnership] of [full address]

carrying on business trading/operating as

represented by _____
in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated _____ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Foskor decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply/provide the above-mentioned Goods/Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Foskor's:

- (i) Foskor Standard Terms and Conditions (which may be subject to amendment at Foskor's discretion if applicable);
- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Foskor should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Foskor's acceptance thereof shall constitute a binding contract between Foskor and me/us.

Should Foskor decide that a formal contract should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Foskor's Letter of Award, shall constitute a binding contract between Foskor and me/us until the formal contract is signed.

Respondent's Signature

Date and Company Stamp



RFP NUMBER: [FOSPHB-RFP-34-25/26]

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 2 [two] weeks thereafter, FOSKOR may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow FOSKOR to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Goods/Services due to non-performance by ourselves, etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide FOSKOR with cause for cancellation.

ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: _____

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent [the Supplier/Service provider] will be informed of the acceptance of its Proposal. FOSKOR will also publish the outcome of the tender, including successful and unsuccessful bidders, in the National Treasury e-tender portal, CIDB i-tender portal (where applicable) and the FOSKOR website. Any unsuccessful bidder has a right to request reasons for the bid not to be successful and FOSKOR has a duty to provide those reasons on receipt of the request from the bidder.

VALIDITY PERIOD

FOSKOR requires a validity period of 180 Business Days [17 July 2026] against this RFP, excluding the first day and including the last day.

NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [C.C.] on whose behalf the RFP is submitted.

(i) Registration number of company / C.C. _____

(ii) Registered name of company / C.C. _____

(iii) Full name(s) of director/member(s) Address/Addresses ID Number(s)

Respondent's Signature

Date and Company Stamp

RETURABLE DOCUMENTS

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP <u>will</u> result in a Respondent's disqualification.</i>
Returnable Documents Used for Scoring	<i>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</i>
Essential Returnable Documents	<i>Failure to provide essential Returnable Documents <u>will</u> result in Foskor affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</i>

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.

a) Mandatory Returnable Documents

Respondents are required to submit with their bid submissions the following **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 4 : Fully Completed Pricing and Delivery Schedule	
ANNEXURE A: Technical Pre-Qualification/Legal /minimum requirement (page2 – Scope of Work)	

b) Returnable Documents Used for Scoring

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP	
<i>Insert any documents to be used for the technical evaluation that will not result in disqualification but a score of zero for that aspect of the technical evaluation, e.g. number of references or CVs required.</i>	

c) Essential Returnable Documents:

Over and the above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

Respondent's Signature

Date and Company Stamp

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
SECTION 1: SBD1 FORM	
SECTION 5 : Proposal Form and List of Returnable documents	
SECTION 6 : Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7 : RFP Declaration and Breach of Law Form	
SECTION 9: B-BBEE Preference Points claim form	
SECTION 11 : Protection of Personal Information	
CSD Registration report	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract **[the Agreement]** and fail to present FOSKOR with such renewals as and when they become due, FOSKOR shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which FOSKOR may have for damages against the Respondent.

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

Respondent's Signature

Date and Company Stamp

SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP /FOSKOR STANDARD TERMS AND CONDITIONS & APPLICABLE DOCUMENTS

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with and agrees with all the conditions governing this RFP. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Foskor SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:

1	Foskor's General Bid Conditions
2	Foskor Standard Terms and Conditions
3	Foskor's Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications drawings attached to this RFP

Note: Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Foskor vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Foskor's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this ____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

Respondent's Signature

Date and Company Stamp

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. FOSKOR has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
3. We have been provided with sufficient access to the existing FOSKOR facilities/sites and any and all relevant information relevant to the Goods/Services as well as FOSKOR information and Employees and have had sufficient time in which to conduct and perform a thorough due diligence of FOSKOR's operations and business requirements and assets used by FOSKOR. FOSKOR will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price;
4. At no stage have we received additional information relating to the subject matter of this RFP from FOSKOR sources, other than information formally received from the designated FOSKOR contact(s) as nominated in the RFP documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by FOSKOR in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;
6. We have complied with all obligations of the Bidder/Supplier as indicated in the FOSKOR Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with FOSKOR;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the FOSKOR Group including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of FOSKOR;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of FOSKOR in the past 10 years. I further declare that if they were a former employee or board member of FOSKOR in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and

Respondent's Signature

Date and Company Stamp

10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/
PARTNER/SHAREHOLDER/EMPLOYEE:
ADDRESS:

Indicate nature of relationship with Foskop:

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Foskop. Information provided in the declarations may be used by Foskop and/or its affiliates to verify the correctness of the information provided]

11. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Foskop [other than any existing and appropriate business relationship with Foskop] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Foskop immediately in writing of such circumstances.

BIDDER'S DISCLOSURE (SBD4)

12 PURPOSE OF THE FORM

12.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

12.2 Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

13 Bidder's declaration

- 13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest² in the enterprise, employed by the state?

YES/NO

- 13.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

² the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

Respondent's Signature

Date and Company Stamp

13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

YES/NO

13.2.1. If so, furnish particulars:

.....
.....

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

YES/NO

13.3.1. If so, furnish particulars:

.....
.....

14 DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 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.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the

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.

Respondent's Signature

Date and Company Stamp

intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

- 14.5 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.
- 14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 14.7 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

BREACH OF LAW

We further hereby certify that I/we (the bidding entity and/or any of its directors, members or partners) **have/have not been** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH: _____

Furthermore, I/we acknowledge that Foskor SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20____

Respondent's Signature

Date and Company Stamp



RFP NUMBER: [FOSPHB-RFP-34-25/26]

Signed on behalf of _____	WITNESS:
Authorised hereto:	
Position:	Position:
Signature:	Signature:
	Registration No of Company/CC
	Registration Name of Company/CC

Respondent's Signature

Date and Company Stamp

SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [B-BBEE] Status Level of Contribution.

Foskor will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- 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 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable. Despite the stipulated preference point system, Foskor shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

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- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **“functionality”** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **“Price”** includes all applicable taxes less all unconditional discounts.
- (i) **“Proof of B-BBEE Status Level of Contributor”**
 - i) the B-BBEE status level certificate issued by an authorised body or person;
 - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
 - iii) any other requirement prescribed in terms of the B-BBEE Act.
- (j) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (k) **“Rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:
80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for comparative price of bid under consideration
 P_t = Comparative price of bid under consideration
 $P_{\min}$ = Comparative price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

Respondent's Signature

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4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
Large	Certificate issued by SANAS accredited verification agency
QSE	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp .]
EME ⁴	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.

4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

4.6 A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

6.1 B-BBEE Status Level of Contribution: . . . =(maximum of 20 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be subcontracted?

(Tick applicable box)

YES		NO	
-----	--	----	--

⁴ In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.

Respondent's Signature

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7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE.

YES		NO	
-----	--	----	--

(Tick applicable box)

Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME ☐	QSE ☐
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole proprietor
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Supplier
- Other Supplier, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

Respondent's Signature

Date and Company Stamp

- 8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we 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 paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
 - iv) If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
 - (a) disqualify the person from the bidding 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) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Foskop reserves the right to penalise the bidder up to 10 percent of the value of the contract;
 - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury 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
 - (f) forward the matter for criminal prosecution.

WITNESSES 	 SIGNATURE(S) OF BIDDERS(S) DATE: ADDRESS:
---	--

SECTION 10: SBD 5

This document must be signed and submitted together with your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation Programme (NIPP), which is applicable to all government procurement contracts that have imported content, became effective on 1 September 1996. The NIP policy and guidelines were fully endorsed by the Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIPP requirements. NIPP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1. PILLARS OF THE PROGRAMME

- 1.1 The NIPP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$5 million or other currency equivalent to US\$5 million will have a NIP obligation. This threshold of US\$5 million can be reached as follows:
 - (a) Any single contract with imported content exceeding US\$5 million.
 - or
 - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$5 million.
 - or
 - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$5 million.
 - or
 - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$5 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIPP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIPP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

Respondent's Signature

Date and Company Stamp

3. BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with their bid documentation at the closing date and time of the bid.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIPP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:
- Bid number;
 - Description of the goods or services;
 - Date on which the contract was awarded;
 - Name, address and contact details of the contractor;
 - Value of the contract; and
 - Imported content of the contract, if possible.
- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

4. PROCESS TO SATISFY THE NIPP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTIC will determine the NIPP obligation;
 - b. the contractor and the DTI will sign the NIPP obligation agreement;
 - c. the contractor will submit a performance guarantee to the DTI;
 - d. the contractor will submit a business concept for consideration and approval by the DTI;
 - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
 - f. the contractor will implement the business plans; and
 - g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

Respondent's Signature

Date and Company Stamp



RFP NUMBER: [FOSPHB-RFP-34-25/26]

- 4.2 The NIPP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number Closing date:

Name of bidder.....

Postal address
.....

Signature..... Name (in print).....

Date.....

Respondent's Signature

Date and Company Stamp

SECTION 11: PROTECTION OF PERSONAL INFORMATION

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 of 2013.(“POPIA”):

consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
2. Foskop will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is “Foskop” and the Data subject is the “Respondent”. Foskop will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
4. Foskop reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Foskop.
5. In responding to this bid, Foskop acknowledges that it will obtain and have access to personal information of the Respondent. Foskop agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. Foskop further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Foskop and/or its authorised appointed third parties.
7. Furthermore, Foskop will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Foskop requires the Respondent to process any personal information disclosed by Foskop in the bidding process in the same manner.
8. Foskop shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).
9. Foskop shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.
10. The Respondent may, in writing, request Foskop to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Foskop correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to

Respondent's Signature

Date and Company Stamp

the processing of any personal information relating to the Respondent in Foskor's possession in terms of the provision of the POPIA and utilising Form 2 of the POPIA Regulations.

11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES	
------------	--

NO	
-----------	--

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Foskor against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: _____

Should a Respondent have any complaints or objections to processing of its personal information, by Foskor, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

Respondent's Signature

Date and Company Stamp



FOSKOR (PTY) LIMITED

SCOPE OF REQUIREMENTS

TO

SUPPLY SERVICE KITS FOR CAT (BARLOW) BRANDED EQUIPMENT

1. INTRODUCTION

Foskor (Pty) Ltd. is an opencast mining and beneficiation operation situated in Phalaborwa. The core business of the Phalaborwa operation is the mining and beneficiation of phosphate rock. (The Foskor operation situated in Richards Bay is primarily a producer of phosphoric acid, phosphate-based fertilizers and lower volumes of sulphuric acid)

As part of its mining and operational efforts, Foskor owns and makes use of a large fleet of CAT (Barlow Equipment) branded earth moving machines. As part of its business operations Foskor has fully equipped maintenance workshops where these machines are maintained inhouse. To ensure maximum availability, machines are serviced according to the CAT recommended service intervals.

2. SCOPE

This scope covers the minimum specifications and requirements for the supply of standard CAT service kits for the following models of machines:

- CAT 789D Haul Truck Fleet size 4
- CAT D10T Dozer Fleet size 1
- CAT 140K Grader Fleet size 1

3. BASIC REQUIREMENT

This is a parts supply contract; it is expected from the service provider to keep on hand service kits complete with all required parts and consumables for the above-mentioned models of machines as per CAT (Barlow) specification.

It is expected that the service provider will within 24 hours after receiving an official request, issue to the requesting Foskor official the requested service kit.

4. MINIMUM PRE-BID QUALIFICATION CRITERIA AND -REQUIREMENTS

The bidder/supplier (Company) must be an industry recognized dealer in the supply of OEM (Original Equipment Manufactured) spares and components for CAT branded earth moving machines- and equipment and must comply with the following mandatory pre-qualification criteria and -requirements before any bid will be considered for technical- and/or commercial evaluation and assessment.

Provide the following supporting information on an official company letterhead, -brochure or similar document:

- a) Be a recognised dealer in the supply of CAT branded spares and components.
(Provide company details)

NOTE: ALL NON-OEM (Original Equipment Manufacturer) DEALERS OR BIDDERS MUST INCLUDE AND ATTACH TO THE OFFICIAL TENDER SUBMISSION A LETTER FROM CAT SOUTH AFRICA THAT:

- 1. BIDDER/SUPPLIER IS A CAT SOUTH AFRICA APPOINTED DEALER OR AGENT FOR THE SUPPLY OF CAT BRANDED SPARES AND COMPONENTS.**
- 2. CAT SOUTH AFRICA WILL CARRY FULL WARRANTY AND RESPONSIBILITY OF ALL SPARES AND SERVICE KITS SUPPLIED.**
- 3. HAS BEEN AWARDED AT LEAST TWO (2) OF THE SAME OR SIMILAR CONTRACTS TO SUPPLY CAT BRANDED SPARES AND SERVICE KITS IN THE PAST THREE (3) YEARS
(Provide contract description, client, contact person, date of award, etc)**
- 4. HAS LOCALLY (SOUTH AFRICA) AVAILABLE IN STOCK 100% OFF REQUIRED SPARES AND COMPONENTS TO IMMEDIATELY UPON REQUEST SUPPLY REQUESTED SERVICE KITS**

5. SERVICE KIT SUPPLY REQUIREMENTS

- a) Supply requested service kit within 24 hours after receiving an official request from a Foskor official (Workshop supervisor, planner or their appointed representative)
- b) All spares, parts and components that make up a complete service kit must be packaged together in a single suitable container.
- c) Containers must be clearly marked with the make and model of the machine.
- d) All spares, parts and components must be delivered in its original (Factory applied) sealed packaging.
- e) All service kits must be delivered to site at Foskor mine, Phalaborwa

6. MANDATORY SUPPLY ITEMS AND INFORMATION

As per PRE-BID QUALIFICATION CRITERIA: Supply company details as a recognised dealer in the supply of CAT branded spares and components. (Supply company description/profile, photos, list of services and products, address, number of employees, organogram structure, turnover, etc) NOTE: 1) Non-OEM supplies to attach a letter from CAT South Africa stating that they are an appointed dealer/agent and that CAT South Africa will carry fully warranty of spares delivered, provide description of previous contracts and confirmation of 100% stock availability. 2) Failure <u>not</u> to provide for <u>all mandatory</u> requested items or information will result in immediate <u>rejection</u> of quote or bid	<i>Attach and reference if space insufficient</i>
--	--

7. TECHNICAL EVALUATION

		% WEIGHTING	INFORMATION PROVIDED MUST BE <u>DETAILED, CLEAR</u> AND CONTAIN <u>SUFFICIENT</u> INFORMATION FOR BID EVALUATION COMMITTEE TO MAKE A <u>DECISIVE</u> ASSESSMENT. <u>DO NOT</u> ONLY TICK (✓), USE THE WORD YES OR SIMILAR SHORT STATEMENT
1.	Provide confirmation that upon receiving an official request, the requested service kit will be delivered to site within 24 hours. Provide exact time in hours/days that a requested service kit will be delivered to site: WEIGHTING: No information = 0.0 Delivery > 5 working days = 0.0 Delivery 3 – 5 working days = 0.5 Delivery 1 - 3 working days = 0.8 Delivery within 1 day/24 hours = 1.0	30%	
2.	Provide confirmation that all spares, parts and components that make up a complete service kit will be packaged together in a single suitable container and clearly marked with machine make and model. WEIGHTING: No information / Not Comply = 0.0 Yes / Comply = 1.0	20%	
3.	Provide confirmation that a full OEM specified service kit will be supplied for each the following machines (Tick appropriate box): • CAT 789D Haul Truck ☐ YES ☐ NO • CAT D10T Dozer ☐ YES ☐ NO • CAT 140K Grader ☐ YES ☐ NO WEIGHTING: No information / Not comply / Not supply = 0.0 Yes / Comply / Can supply = 1.0	25% 15% 10%	
		100%	

NOTE: Failure to confirm compliance or not to provide requested information will result in a reduced technical evaluation score that could adversely affect the bidders chance of being awarded this contract/order.

Any bid/quotation with a technical score of less than 70% will not be considered

8. COMMERCIAL AND PRICING SCHEDULE

- a. **The provided PRICING SCHEDULES will be regarded at the primary quotation. Failure to complete the PRICING SCHEDULES in full or to provide a similar compiled quotation may result in rejection of the submitted tender.**
 - 1. SERVICE KIT : CAT 789D HAUL TRUCK
 - 2. SERVICE KIT : CAT D10T DOZER
 - 3. SERVICE KIT : CAT 140K GRADER
 - 4. PRICE ESCALATION FORMULAE
- b. All quoted process to be exclusive of VAT (Value Added Tax)
- c. If any minimum requirements may alter or be added for whatever reason, it will be brought to the attention of the contractor before the closing date for the submission of tenders
- d. Contract period of **36 months** from date of acceptance.
- e. Quoted process must include delivery to Foskor mine, Phalaborwa
- f. The service provider will compile a monthly invoice of all transactions and present it to the Foskor official for verification and approval. The service provider shall submit the approved invoice to the Foskor creditors department for payment.
- g. Detailed description of any items or conditions that the bidder does not meet to be attached to the official quotation
- h. The bidders standard service warranty agreement to be attached to the official tender.
- i. Any other optional support, spares, training or guarantee not mentioned in this scope may be noted on the official tender.
- j. If any minimum requirements may alter or be added for whatever reason, it will be brought to the attention of the bidder before the closing date for the submission of the tender.
- k. Foskor reserves the right to remove any listed item.
- l. Foskor reserves that right to purchase only individual items.

1. PRICING SCHEDULE : SERVICE KIT CAT 789D HAUL TRUCK

1000 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

500 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

2. PRICING SCHEDULE : SERVICE KIT CAT D10T DOZER

1000 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

500 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

3. PRICING SCHEDULE : SERVICE KIT CAT 140K GRADER

1000 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

500 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R
			R	R

250 HOURS				
PART NUMBER (COMPLETE KIT)	DESCRIPTION (COMPLETE KIT)			TOTAL AMOUNT (Excl VAT)
				R
PART NUMBERS (INDIVIDUAL ITEMS)	PARTS DESCRIPTION	QUANTITY	AMOUNT EACH	TOTAL AMOUNT
			R	R
			R	R
			R	R
			R	R
			R	R

4. PRICE ESCALATION FORMULAE	
Months 7-12	
Months 13-18	
Months 19 - 24	
Months 25 - 30	
Months 31 - 36	



Foskor (Pty) Ltd

**STANDARD TERMS AND CONDITIONS FOR
PROCUREMENT**

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WHEREBY THE PARTIES AGREE AS FOLLOWS -

1 INTERPRETATION

In the Agreement (as hereinafter defined) -

- 1.1 unless the context indicates otherwise, reference to one gender shall include the other gender, use of the singular shall include the plural and *vice versa*, and reference to persons or third parties shall include natural as well as legal persons and associations, whether incorporated or otherwise.
- 1.2 the use of the word “including” (or the like) followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.3 unless the context indicates otherwise, any reference to “days” shall be a reference to calendar days.
- 1.4 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which by necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.5 the terms of this Agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this Agreement.
- 1.6 if any provision in a definition clause is a substantive provision conferring any right or imposing any obligation on any Party, then, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.

2 DEFINITIONS

The following words / expressions shall have the meaning(s) respectively set out opposite them, unless it appears otherwise from the context of the Agreement: -

- 2.1 **"Acts"** means the common law, all applicable statutes, statutory instruments, by-laws, regulations, ordinances, orders, rules and other secondary provincial or local legislation, treaties, judicial decisions, directives and codes of practice having force of law in the Republic of South Africa or any other country having jurisdiction over either of the Parties or to the performance of the Services and with which the Parties are bound to comply;
- 2.2 **"Affiliate"** means, with respect to any entity, any other entity which -
- 2.2.1 is a subsidiary or a holding company or a subsidiary of the holding company of such entity. In regard to this definition the terms "subsidiary" and "holding company" shall have the meaning assigned thereto in Section 3 of the Companies Act, 2008 (Act 71 of 2008), provided that they shall also include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of such term; and/or
- 2.2.2 controls, is controlled by or is under common control with such entity. In regard to this definition the term **"control"** shall include control of any entity through any voting pool or other arrangement, the right to the exercise of voting rights, directly or indirectly, resulting in effective control of any entity and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any entity;
- 2.3 **"Agreement"** means these Standard Terms and Conditions read together with the Letter of Award and any Annexures to such Letter of Award and any Purchase Order issued by Foskor to the Supplier;
- 2.4 **"Applicable Specifications"** means the specifications as may be set forth in the Letter of Award or Purchase Order, any regulatory requirement in terms of the Acts, specifications or standards prescribed by the Original Equipment Manufacturer (OEM) or South African National Standards (SANS), to which a relevant Services must comply;
- 2.5 **"Authorised Access"** means access granted to the Supplier or its Personnel to enter an operational area of Foskor for the purpose of performing the Services in accordance with the Agreement and for no other purpose;
- 2.6 **"Authorised Sub-contractor"** means a third party approved by Foskor in terms of clause 30.2;

2.7 **"Causal Event"** means –

- 2.7.1 a compromise, scheme of arrangement or composition by the Supplier with any or all of its creditors;
- 2.7.2 liquidation of the Supplier or placement of the Supplier in judicial management or business rescue, whether provisionally or finally;
- 2.7.3 a default or cessation, or a reasonable prospect of cessation (as the case may be), of the Supplier's normal line of business;
- 2.7.4 the commission of any act or any omission which, if committed or omitted by an individual, would constitute an act of insolvency in terms of the Insolvency Act, 1936, or the existence of circumstances which would allow for the winding up of the Supplier in terms of the Companies Act, 2008, and/or in terms of the Close Corporations Act, 1984, as the case may be;
- 2.7.5 disposal by the Supplier of a material portion of its undertaking or assets; or
- 2.7.6 any Change of Control of the Supplier. A **"Change of Control"** shall be deemed to have occurred in circumstances where, subsequent to the Commencement Date, any person (whether natural, juristic or otherwise) acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Supplier;

provided that the Causal Events set forth in sub clauses 2.7.3, 2.7.4, 2.7.5 and 2.7.6 shall be deemed to be Causal Events, if Foskor, acting in good faith, considers such events to be detrimental to it for sound business reasons;

- 2.8 **"Commencement Date"** means the date by which the rendering of the Services is to commence as set forth in the Letter of Award or relevant Purchase Order or Special Commercial Terms and Conditions, as the case may be;
- 2.9 **"Confidential Information"** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation) –
- a) information relating to the Disclosing Party's business activities or operations, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;
 - b) information contained in or constituting or relating to the Disclosing Party's equipment, systems, machinery, hardware or software, networks, telecommunications services and facilities, including third party products, and associated material, and information or incidents concerning faults or defects therein;
 - c) the Disclosing Party's technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets;
 - d) the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto;
 - e) Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party, including but not limited to third party products and data relating to the customers of the Disclosing Party; and
 - f) business process outsourcing knowledge of the Disclosing Party and information relating to the Disclosing Party's current and existing strategic

objectives, strategy documents and plans for both its existing and future plant operations, information technology, processing, business processing and business process outsourcing;

However, Confidential Information excludes information or data which -

- i. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
- ii. subsequently becomes lawfully part of the public domain by publication or otherwise; or
- iii. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
- iv. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

provided that -

- the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions; and
- the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
- any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession;

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

- 2.10 **"Contract Period"** means the period specified in the Letter of Award or relevant Purchase Order or Special Terms during which the Services are to be rendered by the Supplier in terms of the Agreement;
- 2.11 **"COP"** means codes of good practice compiled and regularly updated by Foskor;
- 2.12 **"Data"** means any data, including personal information, as defined in the Electronic Communications and Transactions Act, 2002, and any other applicable legislation;
- 2.13 **"Disclosing Party"** means the Party whose Confidential Information is disclosed;
- 2.14 **"Foskor"** means Foskor (Pty) Ltd, registration number 1951/002918/07, a private company duly incorporated in terms of the company laws of the Republic of South Africa;
- 2.15 **"Indemnitee"** means the Party that is indemnified;
- 2.16 **"Indemnitor"** means the Party that indemnifies the other Party;
- 2.17 **"Intellectual Property"** means any know-how (not in the public domain), invention (whether or not patented), design, trade-mark (whether or not registered), service marks, trade names, domain names, logos, get-up or Copyright Material (whether or not registered), goodwill, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property. For the purposes of this definition, "Copyright Material" means any Material in which copyright subsists;
- 2.18 **"Letter of Award"** means a separate document issued by Foskor to the Supplier informing the Supplier that the contract for the rendering of Services has been awarded to it, whether conditional or unconditional;
- 2.19 **"Losses"** means all losses, liabilities, costs, expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties), fines, penalties, damage, and claims;
- 2.20 **"Parties"** means Foskor and the Supplier, and **"Party"** means either of them;
- 2.21 **"Penalties"** means, if applicable, the penalties set out in the Letter of Award, Special Terms or relevant Purchase Order;

- 2.22 **"Personal Information"** shall mean personal information as defined in the POPIA.
- 2.23 **"Personnel or Staff"** means any employee, agent, consultant, sub-contractor or other representative of either party;
- 2.24 **"POPIA"** shall mean the Protection of Personal Information Act (Act Number 4 of 2013), as amended from time to time.
- 2.25 **"PPPFA"** means Preferential Procurement Policy Framework Act, 2000 and Preferential Procurement Regulations, 2017, as amended from time to time;
- 2.26 **"Price "** means the price and any fees and charges for the Services, as set forth in the Letter of Award or relevant Purchase Order and as may be further detailed in any applicable Special Commercial Terms and Conditions;
- 2.27 **"Purchase Order"** means a separate document(s) issued by Foscort to the Supplier in terms of the Agreement and in which Foscort requests the nature and scope of Services to be supplied and rendered by the Supplier to Foscort in terms of the Agreement, and any other information relevant to such request;
- 2.28 **"Receiving Party"** means the Party to whom Confidential Information is disclosed;
- 2.29 **"Services"** means the services and or deliverables described in the Letter of Award or relevant Purchase Order, Special Terms and or Scope of Work;
- 2.30 **"Service Manager "** means one or more individuals designated by each Party in terms of the Agreement, to whom critical communications regarding the Agreement will be addressed. Either Party may replace such individual appointed by that Party from time to time on reasonable prior notice;
- 2.31 **"SOP"** means standard operating procedures compiled and regularly updated by Foscort which regulate the best practices and manner in which work activities are to be performed;
- 2.32 **"Special Terms"** means any Special Commercial Terms and Conditions regulating the performance of the Services and attached to the Letter of Award or on the Purchase Order;

2.33 **"Supplier"** means the party to whom a Letter of Award and subsequent Purchase Orders have been issued and as is described therein;

2.34 **"Tender Documents"** means the documents comprising Foskor's invitation to tender and the documents comprising Supplier's response thereto, including the prescribed tender form, specifications, instructions, method statements or other enquiry documents in the tender process, scope of works, drawings, Applicable Specifications, timelines, charts and prices for the Services.

3 RECORDAL

3.1 Foskor wishes to procure Services which comply with Applicable Specifications and requirements set forth in the Agreement.

3.2 The Supplier represents that it has the necessary expertise, skill, know-how, qualifications, ability, capacity and resources, including financial resources, to render and perform the Services which meet the requirements set forth in the Agreement, to Foskor.

4 COMMENCEMENT AND DURATION

The Agreement shall commence on the Commencement Date and will terminate at the end of the Contract Period, unless terminated by either Party in accordance with the provisions of the Agreement.

5 THE RELATIONSHIP

5.1 The Supplier hereby acknowledges that any Affiliate of Foskor shall be entitled to benefit from the terms and conditions set forth in the Agreement. As such (i) any licence rights granted to Foskor shall be deemed to be granted to Foskor's Affiliates, unless specifically recorded otherwise in the Agreement; (ii) any Foskor Affiliate shall be entitled to procure Services from the Supplier in terms of the Agreement or may conclude a separate agreement with the Supplier if required.

5.2 The Supplier hereby acknowledges that to the extent that this Agreement or any Purchase Order executed under this Agreement regulates the supply of the Services to Foskor by the Supplier and which provides for pricing based upon pricing discounts or rebates or upon preferential pricing arising from the aggregation of supply, procurement or volumes by Foskor, then, and to that extent, Foskor shall be entitled to include within its supply, procurement or volumes, any volumes derived from its

Affiliates. This clause 5.2 is subject to the further qualification that, where an Affiliate, which has benefited from such pricing discounts or rebates or preferential pricing, ceases to be an Affiliate, then Foskor shall not be entitled to include volumes derived from such former Affiliate following the cessation of the former Affiliate's status as an Affiliate in any further supply, procurement or volumes.

6 SERVICES

- 6.1 The Supplier will provide the Services to Foskor subject to the terms and conditions of the Agreement.
- 6.2 Only Services may be supplied by the Supplier and no other or additional services or goods may be supplied by it in terms of the Agreement unless such other or additional services or goods and the specifications and applicable prices thereof have been set forth in an addendum to the Agreement and signed by both Parties.
- 6.3 Where other or additional services or goods are supplied without the written consent of Foskor, it shall be at the risk of the Supplier and the Supplier shall not be entitled to charge for such services or goods. The Supplier hereby indemnifies Foskor against any claims, loss or damage in respect of the other or additional services or goods supplied by the Supplier.
- 6.4 If the Supplier fails to supply the Services timely or at all, Foskor shall have the right in its sole discretion to obtain the Services from another source and the Supplier shall be liable for any additional cost or expense incurred by Foskor in doing so, without prejudice to any other rights which Foskor may have against the Supplier by reason of such failure.
- 6.5 Where goods are to be delivered as part of the Services, they must be delivered at the time and place provided for elsewhere in the Agreement or as stipulated by Foskor in the relevant Purchase Order. Time shall remain of the essence in respect of the performance by the Supplier. All risk of loss and damage shall be for the Supplier's account if any loss or damage is sustained in breach of any performance or delivery terms or instructions from Foskor's authorised representatives. Where no such instructions are explicitly given by Foskor, it shall be incumbent on the Supplier to make reasonable inquiry as to such performance or delivery terms. Foskor shall not be obliged to accept any goods delivered as part of the Services without delivery instructions and shall not be in breach of this Agreement should it refuse to take

delivery when no delivery instruction has been provided to the Supplier or requested by the Supplier prior to delivery.

- 6.6 Where the Supplier requires access to Foskop's premises to perform the Services, access will only be granted after all Health, Safety, Environmental and Security policies, procedures or protocols have been adhered to. Failing to comply in any manner with Health, Safety and Environmental and Security policies, procedures or protocols will lead to automatic cancellation of the Agreement without Foskop incurring any liability whatsoever. Access will only be granted for the time required to perform the Services. Should the Supplier or any of its Personnel access Foskop's premises, or any part thereof, without the necessary authority or at times not authorised, Foskop may terminate the Agreement immediately or impose such further requirements or restrictions on the Supplier's movement within the plant or operational area as deemed necessary to prevent unauthorised access, abuse of access or to prevent any harm that may have been caused by the Supplier or its Personnel by their conduct or presence.
- 6.7 Foskop shall not incur any liability whatsoever in cases where Foskop terminates the Agreement as provided for in clause 6.6.
- 6.8 The Supplier shall submit a fully resourced project schedule which shall include all activities to be performed and the dates by which such are to be performed to the Foskop Engineer for approval within 14 (fourteen) days of the Commencement Date. The Contractor shall be obliged to perform the Services in accordance with the dates set forth in such project schedule and shall, without affecting the Supplier's liability for its failure to meet the project time schedule, submit a revised schedule to the Foskop Engineer for approval whenever the Supplier's performance fails to meet the project schedule.

7 QUOTATIONS

Where Foskop requests the Supplier to provide a quotation in respect of any proposed other services, the Supplier shall furnish Foskop with a detailed written quotation which shall contain an all-inclusive price for such other services, the specifications to which the services will comply and any guarantee applicable to such services and the details as to the date until which such quotation shall be open for acceptance by Foskop. Where a written quotation does not state a date of expiry, it shall be open for acceptance by Foskop for a reasonable period, which period shall not be less than 120 (one hundred

and twenty) days following receipt by Foskop of such quotation. No contractual obligation is imposed on Foskop by it indicating the acceptability of the Supplier's quotation. In the absence of the Parties' specific written agreement to the contrary, it is the intention of the Parties that a new written agreement will be concluded in respect of any acceptable quotation prior to any legal obligations arising for either Party.

8 SERVICE LEVELS

- 8.1 The Supplier shall perform its obligations with promptness, diligence and courtesy. The Supplier shall execute the Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing services.
- 8.2 The Supplier recognises that its failure to meet service levels set forth in the Agreement may have a material adverse impact on the business and operations of Foskop and that the damage from the Supplier's failure to meet any service level is not susceptible to precise determination. Accordingly, in the event that the Supplier fails to meet a service level, then in addition to all other remedies available to Foskop in law, Foskop may, where agreed upon in the Agreement, recover the applicable Penalty or enforce any right as set out in the Agreement and in law.
- 8.3 The Supplier shall be excused, to the extent to which, and for the period for which (excluding matters relating to health, safety and the environment), the Supplier fails to perform the Services, or some of the Services if such failure, non-performance or delayed performance is caused by -
 - 8.3.1 Foskop or its Staff; or
 - 8.3.2 an instance of *force majeure* as referred to in the Agreement.
- 8.4 In the event that Foskop is entitled to impose a Penalty under the Agreement and elects to enforce the Penalty, the amount of such Penalty shall be set forth as a deduction on the Supplier's next invoice. If there is no further invoice for the performance of Services in question, then the Supplier shall, at Foskop's election, either pay the amount of the Penalty to Foskop or provide Foskop with a credit note for such amount.
- 8.5 If the Supplier fails to meet any service level and such failure is due to its act or omission, the Supplier shall (i) investigate and report on the root causes of the failure to Foskop in writing; (ii) promptly correct the failure; (iii) advise Foskop, as and to the

extent requested by Foskop, of the status of remedial efforts being undertaken with respect to such failure and to make up any lost time; and (iv) take appropriate preventive measures to prevent the recurrence of the failure.

- 8.6 The Supplier shall be responsible for monitoring and measuring its performance against the service levels.
- 8.7 It is recorded that Foskop is entitled to reasonable access to all data in the Supplier's possession relating to the performance of the Services and the Supplier's performance against the service levels.
- 8.8 The Supplier shall provide Foskop with a set of soft-copy reports on the Supplier's performance against the service levels on a monthly basis. The Supplier shall also provide Foskop with detailed supporting information for each report as reasonably requested by Foskop.

9 MEETINGS AND REPORTS

The Parties shall attend the meetings specified in the Agreement. In addition, the Supplier shall attend all *ad-hoc meetings as reasonably* required by Foskop to ensure that the performance of Services is performed effectively and in accordance with the Agreement. In all meetings, minutes of the meeting shall be taken and signed off by Foskop as a true record of discussions and decisions taken at the meeting.

10 PRICE

- 10.1 The Price for the Services and providing any deliverables shall be as stated in the Letter of Award or relevant Purchase Order or relevant annexure to such Letter of Award.
- 10.2 Unless otherwise specified, all Prices set out in the Agreement are exclusive of Value Added Tax.
- 10.3 Both Parties acknowledge that the Prices specified in the Agreement are intended to compensate the Supplier fully for all Services to be performed and the supply of any related goods. Accordingly, Foskop will not be obligated to pay the Supplier any amounts in addition to those specifically described in the Agreement.

11 PAYMENT

- 11.1 Unless otherwise agreed in writing, invoices shall be rendered monthly in arrears and payment of the Supplier's invoices shall be made by Foskor within 30 (thirty) days from date of receipt thereof by Foskor's appointed Service Manager. It will be the responsibility of the Supplier to obtain the details of the applicable Service Manager from Foskor.
- 11.2 The invoice will set out the detail of the applicable Purchase Order, the Services performed and the dates upon which the Services were performed. Foskor shall be entitled to stipulate, on reasonable notice, additional invoicing requirements applicable to any Prices levied by the Supplier under the Agreement.
- 11.3 Foskor will make payment to the Supplier by means of electronic transfer to the Supplier's nominated bank account within the time period stated in clause 11.1.
- 11.4 The Supplier shall maintain complete and accurate records of all amounts invoiced to, and payments made by, Foskor under the Agreement in accordance with generally accepted accounting principles. The Supplier agrees to provide Foskor with any information with respect to each invoice as may be requested by Foskor to verify accuracy and compliance with the provisions of the Agreement.
- 11.5 The Supplier shall provide such information as is reasonably requested by Foskor to permit allocation of the Prices under the Agreement by legal entity, by business unit, by site, by client and by Service type.
- 11.6 Foskor may withhold any amounts that it disputes in good faith, provided that it furnishes the Supplier with reasons before the due date of payment. In the event that Foskor, following the resolution of the dispute, whether by negotiation or in accordance with clause 28, is found to be liable for the disputed amount, the maximum liability which Foskor may incur to the Supplier shall be limited to the payment of the amount so withheld, together with interest thereon at a rate equal to that of the prime rate from due date to date of actual payment, both days inclusive.
- 11.7 Any undisputed amount which is due and payable by Foskor to the Supplier, but unpaid may bear interest at a rate equal to that of the prime rate plus 2% from due date to date of actual payment, both days inclusive. The payment of interest as provided for herein shall be the limit of Foskor's liability to the Supplier for such unpaid amount and Supplier shall not be entitled to withhold the performance of the Services

where late payment by Foskop does not exceed 60 (sixty) days from date of receipt of the relevant invoice.

12 SUPPLIER'S STAFF

12.1 Should Foskop at any time have reason to believe that any member of the Supplier's Staff is failing to comply with applicable Acts or Foskop's COP's and SOP's health, safety, environmental and security procedures and guidelines, Foskop shall be entitled to deny such Staff-member access to any or all of Foskop's premises and require the Supplier to replace such Staff member without delay.

12.2 The Supplier accepts sole responsibility for all health and safety matters relating to its Staff in connection with or arising out of the performance of the Services for the duration of the Agreement, including:

12.2.1 providing and ensuring the health and safety of the Supplier's Staff and ensuring that the Supplier's Staff at all times adhere to the health and safety legislation and the terms and conditions of the Agreement; and

12.2.2 ensuring that the neither the health and safety of Foskop's Staff nor that of any third party is endangered in any way by the Supplier's activities or conduct in performing the Services.

12.3 Foskop shall be entitled, by giving no less than 48 (forty-eight) hours written notice to the Supplier setting out full and precise reasons, to require the Supplier to remove and replace any member of its Staff who, in the Foskop's reasonable opinion, is failing to perform their duties in a satisfactory manner and the Supplier shall take such steps as may be necessary to give effect to such notice.

12.4 It is hereby expressly agreed that the Supplier is not appointed to act as Foskop's agent as contemplated in the Construction Regulation, promulgated in terms of the Occupational Health and Safety Act 85 of 1993, as amended.

13 GIFTS AND FAVOURS

Foskop shall be entitled to terminate the Agreement forthwith if it is found that gifts or favours, not freely available to the public, were given by the Supplier, or any Staff, agent or representative of the Supplier to any officer or Staff of Foskop (or family of such Staff member) in contravention of Foskop's Gift Policy or the provision of clause 14 below.

14 BRIBERY AND CORRUPTION

- 14.1 Each Party shall comply with, and not contravene, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and Foskor's Code of Ethics and Business Conduct, Fraud Prevention and Ethics Policy or Gift Policy in obtaining and executing the Service/s. In determining whether or not bribery or corruption was or is being perpetrated regard shall be had to decisions taken in terms of the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010.
- 14.2 Either Party shall be entitled, notwithstanding its other legal remedies, to terminate the Agreement with immediate effect in the event that the other Party is not complying with the aforementioned Acts, Foskor's Code of Ethics and Business Conduct, Fraud Prevention and Ethics Policy or Gift Policy and claim damages from the other Party.

15 AUDITS

- 15.1 The Supplier shall allow Foskor, its auditors (including internal audit, Staff and external auditors) and inspectors as Foskor may from time to time designate in writing, access at all reasonable times to all financial and non-financial records relating to the performance of the Services, any facility or part of a facility at which the Supplier is performing the Services, the Supplier's site, the Supplier's Staff, and to any hardware, software used in the provision of the Services for the purpose of performing audits and inspections on the Supplier to (i) verify the accuracy of the Supplier's charges and invoices; (ii) verify the integrity of Supplier's data and examine the systems that process, store, support and transmit that data relating to the Services; and (iii) examine the Supplier's performance of the Services including: (a) verifying compliance with the service levels; (b) examining practices and procedures including security practices and procedures, systems, general controls, and the efficiency of the Supplier's operation to the extent relevant to the level of the Supplier's performance or charges under the Agreement; (c) verifying compliance with the terms of the Agreement; and (d) verifying compliance with any legislative or regulatory provision or regulation to the extent that such provision is material to Foskor; and (iv) the Supplier shall provide to Foskor's auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. Foskor shall ensure that no unreasonable disruption to the Supplier's business operations take place and shall comply with the Supplier's reasonable security or confidentiality requirements.

- 15.2 The Supplier shall make available promptly to Foskor the findings of any review or audit conducted by the Supplier, its affiliates, or their Staff (including internal and external auditors), to the extent such findings reflect conditions and events which have a material impact on the Services or Foskor.
- 15.3 Promptly after any audit under clause 15.1 or 15.2 the Parties shall meet to review such audit findings and to mutually agree upon the appropriate manner in which to address the risks raised in the audit findings.
- 15.4 The Supplier shall retain a complete record of all financial and non-financial records relating to the Agreement to give effect to the provisions of this clause 15. The Supplier will retain and provide Foskor access upon request to the records, documents and other information until the later of: (i) 3 (three) years after termination of the Agreement; (ii) all pending matters relating to the Agreement (e.g. disputes) are closed; or (iii) such other period as is required by applicable law in relation to those records, documents or other information.

16 OBLIGATIONS OF FOSKOR

- 16.1 Foskor acknowledges that where its responsibilities are clearly defined in the Agreement, Foskor will use reasonable efforts to satisfy these responsibilities. Foskor's failure to perform any of its responsibilities explicitly set forth in the Agreement shall be deemed not to be grounds for termination by the Supplier unless the failure to perform amounts to a material breach of the Agreement on the part of Foskor.

17 OBLIGATIONS OF THE SUPPLIER

- 17.1 The Supplier shall employ competent, suitably qualified and trained Personnel to provide the Services to Foskor in terms of the Agreement.
- 17.2 The Supplier shall at all times conduct its relationships with its employees in a lawful manner and with full regard to the rules, regulations and laws of the Republic of South Africa.
- 17.3 The Supplier shall ensure that it and its Personnel shall adhere to Foskor's general security policies and procedures determined by Foskor from time to time.
- 17.4 The Supplier shall be obliged to procure that its Personnel who no longer require the right of access to Foskor's premises or any part thereof shall immediately

return all access cards, security codes and the like, as well as any other property belonging to Foskor.

17.5 The Supplier shall be liable to Foskor for any loss that Foskor or any of its Personnel and clients may suffer as a result of any negligence, theft, fraud or other criminal act of any Personnel of the Supplier, whilst on Foskor's or related property for the purpose of performing its obligations in terms of the Agreement.

17.6 Other than in respect of a breach of the Agreement on the part of Foskor which has remained unremedied after the Supplier has given Foskor due notice to correct same in accordance with clause 25, the Supplier shall not be relieved of any of its obligations in terms of the Agreement, notwithstanding that Foskor has failed to perform any of its own obligations, unless otherwise provided for in the Agreement.

17.7 The Supplier undertakes to consult with Foskor prior to it making changes to its management responsible for executing its obligations in terms of the Agreement.

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Foskor retains all right, title and interest in and to Foskor's Intellectual Property.

18.2 The Supplier shall, upon accepting any Letter of Award or Purchase Order issued to it by Foskor, identify in writing in a schedule, to be attached to its acceptance, any Intellectual Property owned by the Supplier and which is relevant to the performance of the Services. In the absence of such a schedule identifying Supplier's Intellectual Property, it shall be assumed that no Supplier's Intellectual Property will be utilised in the supply of the Services.

18.3 The Supplier retains all rights, title and interest in and to the Supplier's Intellectual Property listed in the said schedule that is used in connection with the performance of its obligations. Insofar as is necessary for the performance of the Services, the Supplier hereby grants Foskor a non-exclusive license to utilise such Supplier's Intellectual Property for the continued operation of its facilities subject to the terms and conditions of this Agreement and warrants that it has good, unencumbered title and ownership to such Intellectual Property and is entitled to transfer and assign to Foskor (and its Affiliates) such licence pursuant to the Agreement. It is recorded that the costs for such licences shall be included in the Price set out in the Agreement.

- 18.4 The Supplier shall not introduce into Foskop's environment any third-party Intellectual Property or otherwise use such third-party Intellectual Property in the performance of its obligations without first obtaining Foskop's and the relevant third party's consent thereto.
- 18.5 The Supplier shall not, without Foskop's express prior written consent, use any third-party Intellectual Property licensed to Foskop whether to perform its obligations or for any other purpose whatsoever.
- 18.6 Foskop shall have all right, title and interest to all Intellectual Property developed or generated specifically for Foskop that may be required to enable the Supplier to perform its obligations in terms of the Agreement.
- 18.7 The Supplier hereby irrevocably assigns, transfers and conveys to Foskop without further consideration all of its rights, title and interest in all Intellectual Property rights and/or other proprietary rights in such materials referred to in clause 18.6, and where such materials have not yet been created, all future copyright therein (with immediate effect from the date that such copyright comes into existence). The Supplier agrees to execute any documents or take any other actions as may reasonably be necessary, or as Foskop may reasonably request in writing, to perfect Foskop's ownership of the Intellectual Property rights in such deliverables.

19 PROTECTION OF PERSONAL INFORMATION

- 19.1 The Parties acknowledge that for the purposes of the Agreement they have each disclosed, and each will in future disclose, to the other Personal Information regarding themselves and their respective employees, executives, shareholders and other persons as may have been, and will be, necessary for the purposes of concluding and executing this Agreement, and to further their business relationship. Further, it is acknowledged and agreed by the Parties that they each have the necessary consent to share or disclose the Personal Information and that the information may have value. The parties agree that they will at all times comply with POPIA, its Regulations and Codes of Conduct and that they shall each only collect, use, and process Personal Information disclosed to it pursuant to the Agreement in a lawful manner, and only to the extent required to perform their respective obligations in terms of the Agreement and to further their business relationship.

- 19.2 Each Party shall put in place, and at all times maintain, appropriate physical, technological, and contractual security measures to ensure the protection and confidentiality of Personal Information disclosed to it pursuant to the Agreement.
- 19.3 Each Party shall notify the other immediately where it has reasonable grounds to believe that Personal Information disclosed to it has been lost, destroyed, or accessed or acquired by any unauthorised person.
- 19.4 Unless required by law, neither Party shall disclose any Personal Information received by it from the other Party to any third party without the prior written consent of the other Party, and notwithstanding anything to the contrary contained herein, neither Party shall transfer any Personal Information out of the Republic of South Africa, without the explicit authorisation of the other Party and then subject to all requirements set forth in POPIA being complied with in respect thereof.
- 19.5 The Parties hereby undertake that they shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the other Party, and to the extent necessary to provide the Services to Foskor.

20 CONFIDENTIALITY

- 20.1 The Disclosing Party shall disclose so much Confidential Information to the other Party as it deems appropriate in the circumstances. The Disclosing Party shall disclose such Confidential Information on a non-exclusive basis, either directly or indirectly
- 20.2 The Receiving Party acknowledges the great importance of the Confidential Information to the Disclosing Party and, where applicable, third party proprietors of such information, and recognises that the Disclosing Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- 20.3 The Receiving Party agrees and undertakes -
- 20.3.1 Except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary

to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;

20.3.2 Except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;

20.3.3 Subject to clause 20.8, to restrict the dissemination of the Confidential Information to only those of its Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure by its Staff; and

20.3.4 To take all practical steps, both before and after disclosure, to impress upon its Staff who are given access to Confidential Information the secret and confidential nature thereof.

20.4 All Confidential Information disclosed by the Disclosing Party to the Receiving Party, or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party -

20.4.1 to be proprietary to the Disclosing Party or where applicable, the relevant third party proprietor; and

20.4.2 not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.

20.5 The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting its own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.

20.6 The Disclosing Party may at any time on written request to the Receiving Party, require that the Receiving Party immediately return to the Disclosing Party or destroy any Confidential Information and may, in addition, require that the Receiving Party furnish a written statement to the effect that upon such return or

destruction, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material.

20.7 Notwithstanding the aforementioned, the Disclosing Party acknowledges that the Receiving Party may have a professional obligation to retain certain records and failure to do so may prejudice the professional standing of the Receiving Party. As such a copy of any material shall be kept in strictest confidence by the Receiving Party for records purposes only. All other copies shall be dealt with as per the request of the Disclosing Party in accordance with the abovementioned sub-clauses.

20.8 The Receiving Party shall procure that its Staff who have access to Confidential Information, give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by the Disclosing Party. Foskop shall be entitled to deny a Supplier Staff member access to its premises or prevent such member conducting any work in relation to the Services should Foskop not be in receipt of a signed undertaking from such member on such terms and conditions as determined by Foskop. Foskop's failure to obtain receipt of the undertaking referred to in this clause 20.8 shall in no way detract from the Supplier's obligation in terms of this Agreement.

20.9 The Parties record that this clause 20 shall not be applicable where the Receiving Party discloses Confidential Information to (i) attorneys or auditors, provided that such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities; or (ii) any Affiliate of either Party.

20.10 In the event that the Receiving Party is required to disclose the Confidential Information, the Receiving Party:

20.10.1 will advise the Disclosing Party thereof prior to disclosure, if possible;

20.10.2 will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;

20.10.3 will afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings; and

20.10.4 will comply with the Disclosing Party's requests as to the manner and terms of any such disclosure.

20.11 Nothing contained in the Agreement will restrict either Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Services under the Agreement, provided that in doing so such Party does not disclose Confidential Information to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.

21 SUPPLIER'S WARRANTIES

21.1 The Supplier represents and warrants that (a) it has, and will acquire at its cost, all the necessary equipment, material, licences, permits, registration certificates, or other administrative authorisations required by applicable Acts required to perform its obligations in terms of the Agreement; (b) it has the experience, ability, expertise and adequate numbers of qualified Staff with suitable training, education, experience, knowledge and skill to perform its obligations in terms of the Agreement; (c) it will perform its obligations in a good, professional and workmanlike manner; and (d) it has the capacity and authority to enter into and perform in terms of the Agreement.

21.2 In addition to the warranties above, the Supplier warrants that (a) the Services and any related goods will comply with any standards having legally binding effect, will be fit for purpose, free of defects and comply with the Applicable Specifications stated in the Agreement; and (b) the Services will be free from all defects for a period of 12(twelve) months after installation and commissioning or such other period as specified elsewhere in the Agreement.

21.3 Should any defect in the Services arise within the period stated in 21.2 above, the Supplier will immediately, and at its cost, reperform or correct the unsatisfactory Services.

21.4 The Supplier warrants that it will at all times comply with all relevant Acts and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the performance of its obligations undertaken in terms of the Agreement.

22 INDEMNITIES

22.1 The Indemnitor indemnifies the Indemnatee, including its Staff, and holds them harmless against all liabilities, costs, expenses, damages, compensation and losses

including such legal and attorneys' fees as between attorney and client suffered or incurred by the Indemnitee, caused by the acts or omission of the Indemnitor or its Staff or arising out of the Indemnitor or its Staff:

- 22.1.1 failing to comply with applicable Acts, including the Occupational Injuries and Diseases Act, No 130 of 1993 and any industry code/practice applicable to the performance of its obligations in terms of the Agreement;
- 22.1.2 polluting or damaging the environment, including the costs of clean-up and rehabilitation, relating to the performance of its obligations in terms of the Agreement;
- 22.1.3 causing the death or personal injury of any person and arising out of the performance of its obligations in terms of the Agreement;
- 22.1.4 damaging, loss of or destruction of any property arising out of the performance of its obligations in terms of the Agreement;
- 22.1.5 causing any third party claim against the Indemnitee arising out of or in connection with the performance of its obligations in terms of the Agreement;
- 22.1.6 breaching any acts relating to corruption;
- 22.1.7 breaching any warranties; and
- 22.1.8 breaching of any professional duty or of the provisions of the Agreement.

23 LIMITATION OF LIABILITY FOR INDIRECT DAMAGES

- 23.1 Notwithstanding any other provision of this Agreement to the contrary, neither Party shall be liable to the other for any indirect or consequential damages, including any loss of profit, anticipated savings or business, or for loss or damage to goodwill or reputation.
- 23.2 Nothing in this clause 23 will be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

24 INSURANCE

Without in any way limiting the obligations, warranties, liabilities and responsibilities of the Supplier in terms of this Agreement or absolving the Supplier from such obligations,

warranties, liabilities and responsibilities, the Supplier shall procure and maintain (at its cost) for the duration of this Agreement adequate insurance cover, including comprehensive third-party public liability insurance cover, relevant to the obligations to be performed by the Supplier in terms of the Agreement.

25 TERMINATION

25.1 If either Party commits a material breach of the Agreement and/or breaches its professional duty and fails to remedy such breach within 14 (fourteen) days of receipt of a notice from the other Party calling upon it to do so, the notifying Party shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, to terminate the Agreement upon written notice to the Party in breach, without prejudice to any claims which such Party may have for damages against the Party in breach. In the case of a material breach by Foskor, the Supplier shall be paid for work already performed (at the behest of Foskor) and signed off by Foskor in accordance with the Agreement up to date of termination. The aforementioned shall be the full damages which the Supplier shall be entitled to by reason of such termination and no other damages shall be claimable whatsoever.

25.2 If (i) a Causal Event occurs in respect of the Supplier or (ii) the Supplier fails to adhere to any legal requirement or (iii) breaches any term or condition of any licence, authorisation or consent held by Foskor and required by Foskor to conduct its business operations and which failure or breach Foskor, in its sole and reasonable discretion, considers to be detrimental to Foskor for sound business reasons; then Foskor shall be entitled, but not obliged, to terminate the Agreement on written notice to the Supplier, in which event such termination shall be without any liability other than for payment in respect of Services already performed in accordance with the Agreement up to date of termination and without prejudice to any claims which Foskor may have for damages against the Supplier. The Supplier shall be entitled, but not obliged, to terminate this Agreement with immediate effect on written notice to Foskor in the event that Foskor is provisionally or finally liquidated or placed under curatorship or business rescue.

26 TERMINATION OR SUSPENSION FOR CONVENIENCE

26.1 Foskor may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Supplier at least 90 (ninety) days prior written notice designating the termination date. The Supplier will immediately cease the

performance of the Services as at the termination date specified in such notice. Foskop shall have no liability to the Supplier with respect to such termination other than for payment in respect of Services already performed in accordance with the Agreement up to date of termination.

- 26.2 Foskop will be entitled to suspend the performance of the Services upon prior written notice for a period specified by Foskop ("Notice of Suspension").
- 26.3 Upon receipt of such Notice of Suspension, the Supplier will promptly suspend the performance of the Services, to the extent specified by Foskop, and will for the duration of such suspension properly maintain, care for, and protect the materials, supplies, consumables and equipment required to perform the Services. The Supplier will also use its best efforts to utilise its material, labour, consumables and equipment in such a manner as to mitigate costs associated with the suspension of the Agreement.
- 26.4 To the extent that the Notice of Suspension will affect the Price or the date for completion of the Services, the Supplier must furnish Foskop, within five (5) days of receipt of the Notice of Suspension, in writing with the potential increase in cost and any extension of time for completion of the Services and any impact on the Price. If the Supplier does not furnish Foskop with the potential increase in the cost or extension of time for completion within the aforesaid 5 (five) days, or such longer period as the Parties may agree in writing, the Supplier will be deemed to have waived any claim it may have for an increase in cost or extension of time by reason of the suspension of the Services.
- 26.5 If the period of suspension exceeds an uninterrupted period of 90 (ninety) days, either Party will have the right to terminate the Agreement. Foskop shall have no liability to the Supplier with respect to such termination other than for payment in respect of

Services already performed in accordance with the Agreement up to date of termination.

- 26.6 In the event that the notice of suspension is issued due to the Supplier's act, omission or breach of Agreement, the Supplier may not claim any compensation or extension of time by reason of such suspension.

27 FORCE MAJEURE

- 27.1 Neither Party shall be liable to the other for any Losses which are a result of any default or delay in the performance of its obligations under the Agreement if and to the extent such default or delay is caused, directly or indirectly, by any event, cause or circumstance beyond the reasonable control of such Party ("Force Majeure Event"), including forced plant shut downs or stoppages or orders suspending of operations or orders by regulatory authorities or breakdowns, pandemic, fire, flood, earthquake, elements of nature or acts of God, riots, strikes, lockout, civil disorders or other labour related disputes, rebellions or revolutions in any country or any other cause beyond the reasonable control of such Party.
- 27.2 The Party affected by the Force Majeure Event (the "Affected Party") shall, as soon as it becomes aware that a Force Majeure Event is likely to occur or has occurred, immediately notify the other Party in writing, setting out in detail the extent and expected duration of the Force Majeure Event. The Affected Party will immediately notify the other Party as soon as the Force Majeure event ceases.
- 27.3 The Affected Party shall then be excused from performance of its obligations to the extent and for the period that it is unable to perform those obligations as a result of the Force Majeure Event and neither Party shall be entitled to claim damages, penalties or other compensation from the other as a result of such Force Majeure Event or the failure by the Affected Party to perform. In addition, the unaffected Party shall not be obliged to counter-perform any obligation where performance of the Affected Party has not taken place due to a Force Majeure Event.
- 27.4 Where the inability of the Supplier to perform the Services due to a Force Majeure Event will, or is reasonably expected to, prevent, hinder, or delay Foskor for more than 3 (three) consecutive days from continuing or recommencing, as the case may be, its applicable operations, Foskor may, where the nature of the Services permit, procure such Services, or any portion thereof, from an alternate source and may terminate the Agreement in whole, or to the extent of the Services procured from the

alternative source, without liability to the Supplier, other than having to pay the Supplier for such Services performed in accordance with the provisions of the Agreement.

- 27.5 Notwithstanding the above, where the Force Majeure Event continues for an uninterrupted period of 30 (thirty) days, either Party may forthwith terminate the Agreement on 10 (ten) days written notice.

28 DISPUTE RESOLUTION

Any dispute arising between the Parties, or any claim by one Party against the other, regarding the existence, validity, interpretation or enforceability of the Agreement, a breach or alleged breach of the Agreement or the liability of a Party under this Agreement (all of the foregoing a "Dispute") shall be subject to the following dispute resolution procedure:

- 28.1 A Dispute will in the first instance be referred to duly authorised senior representatives of each of the Parties for resolution. If such Dispute is not resolved within 30 (thirty) days from date of referral, either party may refer the Dispute to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA").
- 28.2 The arbitration shall be held in Sandton, or such other location as agreed between the Parties, before a single arbitrator agreed on by the Parties, or should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party by AFSA. The arbitration shall be held in the English language.
- 28.3 The arbitrator shall commence the arbitration within 21 (twenty-one) days and proceed as if time is of the essence in the arbitration proceeding and shall render his or her decision within 14 (fourteen) days following the conclusion of the hearing.
- 28.4 Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of AFSA by 3 (three) arbitrators appointed by AFSA.
- 28.5 The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in

terms of this clause 28.5 may be made an order of court at the instance of any Party to the arbitration.

28.6 Each Party agrees to continue performing its obligations under the Agreement while any Dispute is being resolved except to the extent that the issue in Dispute precludes performance (dispute over payment shall not be deemed to preclude continued performance).

28.7 The Parties shall use commercially reasonable efforts to resolve Disputes arising under the Agreement as rapidly as possible.

28.8 This clause 28 shall not preclude either Party from applying for the granting of summary judgment (in cases of liquidated claims) or either Party from seeking urgent relief from the High Court of the Republic of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

28.9 Any dispute resolution or arbitration process under this clause 28 shall be conducted *in camera* and the Parties shall treat as confidential and not disclose to any third party, details of the Dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party provided that the Parties shall be entitled to disclose such information to such persons as are necessary to enable them to institute or defend their case.

29 NOTICES AND DOMICILIUM

29.1 The Parties hereto select the respective addresses appearing below for the purposes of receiving notices as contemplated in the Agreement and the serving of any legal documents (*domicilia citandi et executandi*). The addresses and/or electronic email address may be substituted by notice given as herein required.

29.1.1 Foskor (Pty) Ltd:

Block G
Riverview Office Park
Janadel Avenue
Midrand
1685

Tel: 011 347 0600

Fax: 011 347 0640

Supplier:

Such address and details as may be set forth in the relevant Purchase Order.

- 29.2 All notices, requests, demands, and determinations under the Agreement shall be valid and effective only if in writing, addressed to the recipient's responsible officer and if delivered by hand, mail, or email. In this regard, a notice, request, demand and determination under the Agreement will be deemed to have been received: (i) if delivered by hand, at the time and on the day that delivery is evidenced by a receipt declaration by a member of the addressee's Staff at the addressee's address, provided that if such time is not within normal business hours, then receipt shall be deemed received at the commencement of business on the next business day; (ii) if delivered by registered mail, 5 (five) days after posting if addressed within the Republic of South Africa to an address within the Republic of South Africa and 10 (ten) days after posting in all other instances, which delivery shall be evidenced by the registered mail receipt; and (iii) if delivered by email, at the time and on the date as reflected on the automated delivery receipt or confirmation of receipt from the relevant server of the recipient if before 4pm on a Business Day or, if after 4pm, on the next Business Day. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.
- 29.3 The Parties record that whilst they may correspond via email during the currency of the Agreement for operational reasons, formal legal process must be served at the physical addresses set out above and may not be served or given via email.
- 29.4 All notices of operational nature relating to the Agreement shall be given by the sender's service manager for that specific Service and addressed to the addressee's service manager or responsible engineer or employee for that Service. Any formal consent or approval or notice or demand or request required in terms of the Agreement must comply with clause 29.2, failing which it shall be deemed void.
- 29.5 Notwithstanding the foregoing, any notice of an operational nature given in writing, including one sent by data message, actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 29.

30 GENERAL

- 30.1 The Supplier will not cede, delegate or assign any of its rights, benefits and/or obligations in terms of the Agreement, in whole or in part, to any third party without the prior written consent of Foskor.
- 30.2 The Supplier may not sub-contract its obligations under the Agreement without the prior written consent of Foskor. Should Foskor consent to such appointment, the Supplier shall at all times be responsible to Foskor for fulfilment of all the Supplier's obligations under the Agreement and remain Foskor's sole point of contact regarding the Services, including with respect to payment. No obligation shall arise between Foskor and any Authorised Sub-contractor, save for the correct performance of Services in terms of the Agreement.
- 30.3 Foskor shall have the right during the continued duration of the Agreement to revoke its approval of an Authorised Sub-contractor and direct the Supplier to replace such Authorised Sub-contractor upon 30 (thirty) days' notice if the Authorised Sub-contractor's performance is materially deficient, or *bona fide* doubts exist concerning the Authorised Sub-contractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Authorised Sub-contractor, or there have been material misrepresentations regarding the Authorised Sub-contractor.
- 30.4 Neither Party shall during the currency of the Agreement and for a period of 1 (one) year after its termination, induce, encourage or procure any employee employed by the other Party to become employed by or associated directly or indirectly in any manner in the other. If an employee of either Party responds to an employment advertisement of the other Party, the Party seeking employees shall notify the other Party prior to commencing any formal procedures, in order to minimize business interruption.
- 30.5 Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 30.6 The Supplier shall not make or issue any formal or informal announcement (with the exception of stock exchange announcements), advertisement or statement to

the press to any other person in connection with the details of the Agreement without the prior written consent of Foskor. No documents in possession of the Supplier or photos taken of Foskor's plant or mine may be disseminated or released to any third party without the prior written consent of Foskor.

- 30.7 No change, waiver or discharge of the terms and conditions of the Agreement shall be valid unless in writing and signed by an authorised representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under the Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 30.8 Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under the Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under the Agreement shall not relieve the other Party from the responsibility for complying with the requirements of the Agreement, nor shall it be construed as a waiver of any rights under the Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.
- 30.9 The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement, as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.
- 30.10 The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 30.11 The Parties agree that there are no other collateral terms or conditions to the Agreement, whether oral or written
- 30.12 In the event of a conflict between the documents comprising the Agreement, such conflict shall be resolved in accordance with the order of precedence (in

descending order of priority) as follows (i) the Letter of Award or relevant Purchase order and its annexures; (ii) the scope of work; (iii) the Specifications; (iv) the Special Terms; (v) these Standard Terms and Conditions.

- 30.13 The Supplier acts as an independent contractor and neither the Supplier nor Supplier's Authorised Sub-contractors are deemed to be either expressly or impliedly agents or employees of Foskor. The Parties also warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.
- 30.14 Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the applicable Agreement shall survive any termination or expiration of the applicable Agreement and continue in full force and effect.
- 30.15 Each Party agrees that, in its respective dealings with the other Party under or in connection with the Agreement, it shall act in good faith.
- 30.16 Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of the Agreement.

GENERAL BID CONDITIONS

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1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Foskor RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Foskor as specified in its Bid Document;
- 1.5 **Parties** shall mean Foskor and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Foskor as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Foskor and are to be strictly adhered to by any Respondent to this RFX.

3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Foskor no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 The Bid Documents must be completed in their entirety and Respondents are required to complete their Bid submissions legibly in non-erasable ink.
- 3.3 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.4 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Foskor for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission and not a reprocessed copy or other format thereof.

- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

5 VALIDITY PERIOD

- 5.1 The Respondents must hold their Bid valid for acceptance by Foskor at any time within the requested validity period after the closing date of the bid.
- 5.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Foskor's extension of the validity period.

6 SITE VISITS / BRIEFING SESSIONS

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Foskor deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

7 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must direct such queries to the contact person listed in the RFX Document in the stipulated manner.

8 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the General Manager Procurement.

9 UNAUTHORISED COMMUNICATION ABOUT BIDS

Where Bids are submitted to the General Manager, Procurement Respondents may at any time communicate with the General Manager on any matter relating to its Bid but, in the absence of written authority from the General Manager, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or official of Foskor during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

10 POST TENDER NEGOTIATIONS

Foskor reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Foskor decide to conduct post tender negotiations, bidders will be requested to provide their best and final offers to Foskor based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).

11 RETURNABLE DOCUMENTS

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

12 DEFAULTS BY RESPONDENTS

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 12.1 enter into a formal contract when called upon to do so within such period as Foskor may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 comply with any condition imposed by Foskor,

Foskor may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Foskor in calling for new offers or in accepting a less favourable offer.

13 CURRENCY

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFP.

14 PRICES SUBJECT TO CONFIRMATION

- 14.1 Prices which are quoted subject to confirmation will not be considered.
- 14.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Foskor's best interests.

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

16 EXCHANGE AND REMITTANCE

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Foskor shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Foskor's preference to enter into Rand-based agreements. Foskor would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Foskor to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Foskor will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.
- 16.6 Foskor reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

17 ACCEPTANCE OF BID

- 17.1 Foskor does not bind itself to accept the lowest priced or any Bid.
- 17.2 Foskor reserves the right to accept any Bid in whole or in part.
- 17.3 Upon the acceptance of a Bid by Foskor, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.4 Where the Respondent has been informed by Foskor of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

- 18.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

19 TERMS AND CONDITIONS OF CONTRACT

- 19.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Foskor's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be.

20 CONTRACT DOCUMENTS

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Foskor's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Foskor inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any

subsequent exchange of correspondence] as well as Foskor's Letter of Acceptance/Intent, shall constitute a binding contract until the final contract is signed.

21 LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

22 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

23 RESPONDENT'S SAMPLES

- 23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 23.2 Foskor reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 Payment will not be made for a successful Respondent's samples that may be retained by Foskor for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.
- 23.4 If Foskor does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

24 SECURITIES

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Foskor for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Foskor to make good any loss or damage which Foskor may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 Additional costs incurred by Foskor necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 24 will be for the account of the Supplier/Service Provider.

25 PRICE AND DELIVERY BASIS FOR GOODS

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [ICC Incoterms 2010] price basis in accordance with the terms and at the delivery point or points specified in Foskor's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.
- 25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:
- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
 - b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [ICC Incoterms 2010] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

26 EXPORT LICENCE

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

27 QUALITY OF MATERIAL

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in unused condition, neither second-hand nor reconditioned.

28 DELETION OF ITEMS EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

29 VALUE-ADDED TAX

- 29.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 29.2 In respect of foreign Services rendered:
- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
 - b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

- 30.1 Method of Payment
- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1 (a) above. Failure to comply with clause 30.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

30.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Foskor of the Supplier/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

31.1 Contract Quantities

- a) It must be clearly understood that although Foskor does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.
- b) It is furthermore a condition that Foskor will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.
- c) The estimated planned quantities likely to be ordered by Foskor per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Foskor reserves the right to order only those quantities sufficient for its operational requirements.

31.2 Delivery Period

- a) Period Contracts and Fixed Quantity Requirements
It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.
- b) Progress Reports
The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.
- c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Foskor reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

32.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

32.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Foskor or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Foskor, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Foskor.

32.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

32.4 Foreign specifications

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

33.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Foskor according to whichever officer is specified in the Bid Documents.

33.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

33.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

33.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to

Foskor by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Foskor, a certified copy thereof should be furnished.
- d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

33.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Foskor in writing whether, for payment by electronic funds transfer [EFT]:

- a) funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

33.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

34 CONFLICT WITH ISSUED RFX DOCUMENT

34.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

35 DATABASE OF RESTRICTED SUPPLIERS (BLACKLISTING)

35.1 All the stipulations on Foskor's blacklisting process as laid down in Foskor's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

35.2 Blacklisting is a mechanism used to exclude a company/person from future business with Foskor and other organs of state for a specified period. On completion of the blacklisting process, the blacklisted entity's details will be placed on National Treasury's Database of Restricted Suppliers for the specified period of exclusion.

35.3 The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

35.4 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Foskor may decide to terminate some or all existing contracts with the company/person as well.

35.5 A supplier/service provider or contractor to Foskor may not subcontract any portion of the contract to a blacklisted company.

35.6 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Foskor or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Foskor that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Foskor damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Foskor in bad faith.

35.7 Foskor recognizes that trust and good faith are pivotal to its relationship with its suppliers/service providers. When a dispute arises between Foskor and its supplier/service provider, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Foskor will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- b) Perjury. Where a supplier/service provider commits perjury either in giving evidence or on affidavit;
- c) Scurrilous allegations. Where a supplier/service provider makes allegations regarding a senior Foskor employee which are without a proper foundation, scandalous, abusive or defamatory.

- d) Abuse of court process. When a supplier/service provider abuses the court process in order to gain a competitive advantage during a bid process.
- 35.8 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.
- 35.9 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's Register of Tender Defaulters.
- 35.10 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Foskor.
- 35.11 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Foskor (Pty) Ltd, whose decision shall be final.

36 PROTECTION OF PERSONAL DATA

- 36.1 Both Parties agree that they may obtain and have access to personal data as a result of the Bid process. The Parties shall at all times ensure that:
- a) they process data only for the express purpose for which it was obtained;
 - b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
 - c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations in terms of the Bid process;
 - d) they do not disclose personal data of the other Party, other than as agreed in paragraph 37.3 below;
 - e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
 - f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control as a result of the Bid process;
 - g) such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 36.2 The Parties agree that if personal data will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to further processing.
- 36.3 Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third

parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this paragraph 37, and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause 37 shall *mutatis mutandis* apply to all authorised third parties who process personal data.

- 36.4 The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.
- 36.5 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place has been effectively implemented.
- 36.6 The Parties agree that they will promptly return or destroy any personal data in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to the Bid process, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 36.7 Personal Information security breach: Respondent's Obligations
 - a) The Respondent is required to notify the Information Officer of Foskor, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data as quickly as is possible. The Respondent shall also be required to provide Foskor with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal data.
 - b) The Respondent shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
 - c) Where required, the Respondent may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
 - d) The Respondent undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Foskor including providing any information or material in its possession or control and implementing new security measures.

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INTEGRITY PACT

Between

Foskor (Pty) Ltd

Registration Number: 1951/002918/07

("Foskor")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

PREAMBLE

Foskor values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Foskor and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Foskor as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Foskor vendor.

1 OBJECTIVES

- 1.1 Foskor and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
 - a) Enable Foskor to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
 - b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

2 COMMITMENTS OF FOSKOR

Foskor commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Foskor hereby undertakes that no employee of Foskor connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Foskor will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Foskor will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Foskor further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.
- 2.4 Foskor will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Foskop or to any of Foskop's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
 - b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Foskop, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The acceptance and giving of gifts may be permitted provided that:
- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
 - b) many low retail value gifts do not exceed R 1 000 within a 12 month period;
 - c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
 - d) a Bidder / Supplier does not give a Foskop employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
 - e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Foskop employee within a 12 (twelve) month period, irrespective of value;
 - f) a Bidder / Supplier may under no circumstances, accept from or give to, a Foskop employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
 - g) a Bidder / Supplier may not offer gifts, goods or services to a Foskop employee at artificially low prices, which are not available to the public at those prices.
- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Foskop as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- 3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Foskor or other competitors.
- 3.8 The Bidder / Supplier shall furnish Foskor with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.
- 3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Bidder/Supplier confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Foskor as follows:
- a) Human Rights
 - Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
 - Principle 2: make sure that they are not complicit in human rights abuses.
 - b) Labour
 - Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
 - Principle 4: the elimination of all forms of forced and compulsory labour;
 - Principle 5: the effective abolition of child labour; and
 - Principle 6: the elimination of discrimination in respect of employment and occupation.
 - c) Environment
 - Principle 7: Businesses should support a precautionary approach to environmental challenges;
 - Principle 8: undertake initiatives to promote greater environmental responsibility; and
 - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
 - d) Anti-Corruption
 - Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

4 INDEPENDENT BIDDING

- 4.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, 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.
- 4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 4.3 In particular, without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a) prices;
 - b) geographical area where Goods or Services 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 RFP; or
 - f) bidding with the intention of not winning the Bid.
- 4.4 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 Goods or Services to which his/her Bid relates.
- 4.5 The terms of the Bid as submitted 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.
- 4.6 Bidders are 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 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

5 DISQUALIFICATION FROM BIDDING PROCESS

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, FOSKOR may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3, or any material violation, such as to put its reliability or credibility into question. FOSKOR may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, FOSKOR reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- 5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, FOSKOR may at its own discretion revoke the exclusion or suspend the imposed penalty.

6 DATABASE OF RESTRICTED SUPPLIERS (BLACKLISTING)

- 6.1 All the stipulations on Foskop's blacklisting process as laid down in Foskop's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Foskop and other organs of state for a specified period. On completion of the blacklisting process, the blacklisted entity's details will be placed on National Treasury's Database of Restricted Suppliers for the specified period of exclusion.
- 6.3 The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.4 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Foskop may decide to terminate some or all existing contracts with the company/person as well.
- 6.5 A supplier or contractor to Foskop may not subcontract any portion of the contract to a blacklisted company.
- 6.6 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
 - a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
 - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - e) has acted in a fraudulent or improper manner or in bad faith towards Foskop or any Government Department or towards any public body, Enterprise or person;
 - f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Foskop that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
 - g) caused Foskop damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
 - h) has litigated against Foskop in bad faith.
- 6.7 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's Register of Tender Defaulters.

- 6.8 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Foskor.

7 PREVIOUS TRANSGRESSIONS

- 7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.
- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

8 SANCTIONS FOR VIOLATIONS

- 8.1 Foskor shall also take all or any one of the following actions, wherever required to:
- a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
 - b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
 - c) Recover all sums already paid by Foskor;
 - d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Foskor, along with interest;
 - e) Cancel all or any other contracts with the Bidder / Supplier; and
 - f) Exclude the Bidder / Supplier from entering into any bid with Foskor in future.

9 CONFLICTS OF INTEREST

- 9.1 A conflict of interest includes, inter alia, a situation in which:
- a) A Foskor employee has a personal financial interest in a bidding / supplying entity; and
 - b) A Foskor employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Foskor, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.
- 9.2 A Foskor employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
- a) Private gain or advancement; or
 - b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

- 9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Foskor employee / member of Foskor's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
 - b) must notify Foscok immediately in writing once the circumstances has arisen.
- 9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Foscok shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 DISPUTE RESOLUTION

- 10.1 Foscok recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Foscok and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Foscok will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
 - b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
 - c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Foscok employee which are without proper foundation, scandalous, abusive or defamatory; and
 - d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

11 GENERAL

- 11.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 11.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- 11.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 11.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Foscok employees, Foscok expects its Bidders / Suppliers to report this behaviour directly to a senior Foscok official / employee or alternatively by using Foscok's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made between

Foskor (Pty) Ltd [Foskor] [Registration No. 1951/002918/07]

whose registered office is at ,

and

the Company as indicated in the RFQ bid response hereto

WHEREAS

Foskor and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid** or **Bid Document** means Foskor's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
 - 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
 - 1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

- 1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 2.3.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

3. RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Foskor:
 - 3.3.1 return all written Confidential Information [including all copies]; and
 - 3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

4. ANNOUNCEMENTS

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. DURATION

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

6. PRINCIPAL

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

7. ADEQUACY OF DAMAGES

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

8. PRIVACY AND DATA PROTECTION

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Foskor may assign this Agreement at any time to any member of the Foskor Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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