



TENDER NO: WTC (TC/IT) 05/2025

TENDERS ARE HEREBY INVITED FROM SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF TONERS/CARTRIDGES AT WESTERN TVET COLLEGE ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS.

Prospective suppliers who are interested in participating in afore-mentioned tender are invited to submit their bids in full compliance to the requirement of this tender document. The completed document with all attachments must, be signed, and submitted in a clearly labelled sealed envelope and deposited in the tender box at the following address.

**RECEPTION DESK
WESTERN TVET COLLEGE
42 JOHNSTONE STREET
HECTORTON
RANDFONTEIN
(33°55'36.27" S 18°51'22.28" E)**

NAME OF BIDDING ENTITY : _____

NAME OF BIDDING ENTITY REPRESENTATIVE : _____

PHYSICAL ADDRESS OF BIDDING ENTITY : _____

POSTAL ADDRESS OF BIDDING ENTITY : _____

CONTACT DETAILS OF BIDDING ENTITY Tel: _____ Cell: _____

E-MAIL ADDRESS : _____

Tendering Details

Publishing Date	Monday, 08 September 2025
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Contact Details

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Telephone number	011 692 4004 Ext 1002
E-mail address	gmphago@westcol.co.za

Adjudication: 80/20

Tenders will be evaluated using Functionality evaluation criteria of 100 points of which the service provider is required to score the minimum of 70 points in order to be considered for further evaluation. Tenders will be evaluated using 80/20 preference point system which awards 80 points for Price and 20 points for Specific Goals in accordance with PPPFA 2022 Goals as per table below:

Preferential Procurement Policy Framework Act

- 80 Points for Price
- 20 Points for specific goals

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system)
Price	80
Within boundaries of Gauteng Province	10
Outside boundaries of Gauteng Province	0
Youth owned enterprises (persons younger than 35 years)	05
Race: Black	05

BIDDERS ARE REQUESTED TO GO THROUGH ALL THE BIDDING CONDITIONS/MANDATORY REQUIREMENTS BEFORE ATTEMPTING TO COMPLETE THIS DOCUMENT.

1. Bidding Conditions

a)	All suppliers of goods and services are encouraged to register in the National Treasury's web-based Central Suppliers Database from July 1, 2016, at www.csd.gov.za .
b)	According to National Treasury Instruction No.4 A of the 2016/2017 National Treasury Supplier Database, states must guarantee that suppliers awarded business with the State are registered on the CSD before issuing an award letter/purchase order/signed contract.
c)	Each Supplier submitting a tender agrees to do so on the terms and conditions set out in this bid document.
d)	A person fully authorized to commit to the terms must sign the tender and conditions set out in this Tender. Westcol is entitled to assume that there is full authority in the signatory of the person.
e)	If an error has been made on the pricing schedule, it shall be crossed out in black ink and accompanied by initials at each and every alteration.
f)	Completed and Signed Schedule of Pricing as issued in the document failure to do so will lead to disqualification.
g)	No electronic initials and signature will be accepted in the bidding document. The bidder's signature must be signed by hand and with black ink.
h)	Tippex is not allowed on tender documents.
i)	Bids completed in pencil will be regarded as invalid and rejected.
j)	Each page to be initialized as indicated in the document failure to do will lead to disqualification.
k)	E-mailed bid documents will not be accepted.
l)	No pages will be removed from the tender document
m)	All bid prices must be inclusive of 15% VAT for all registered VAT vendors.
n)	The validity period for this tender is one hundred and twenty (120) days.
o)	Bids from people in the service of state as defined in the Public Financial Management Act and Regulations will not be accepted.
p)	Westcol reserves the right, exercisable at its sole discretion, to review, evaluate and dispose of any tender as it sees fit. Nothing stated in this request (whether express or implied) binds or obligates Westcol, or any other member of Westcol to accept the lowest of any price contained in bid document or to accept any tender. Suppliers or their representatives can expect to discuss the details of their tender during the evaluation process. Westcol reserves the right to negotiate specific terms with the preferred suppliers prior to the award of a final contract (if any).

2. Mandatory documents. If not provided the bidder will immediately be disqualified.

a)	Valid Tax Compliance Status
b)	BBB-EE Certificate or Sworn affidavit (Not copy of a certified copy)
c)	Central Supplier database report not older than three (3) months
d)	Certified ID copy of director/s not older than three (3) months (Not copy of a certified copy)
e)	The bidding entity must submit a municipal account or valid signed lease agreement which is in the name of the business
f)	The director(s) of the bidding entity must submit a municipal account or valid signed lease agreement which is in the name of the director(s)
g)	If the bidding entity operates from parents' place / director's place or any other place and is not responsible for Municipal account / Services. The bidder must submit the property owner's Municipal account and Sworn Affidavit of the property owner with the original stamp from the Commissioner of Oaths. Not copy of a certified copy

3. Fully completed and signed standard bidding documents (Compulsory)

- SDB 1: Invitation to bid
- SDB 4: Bidder's Disclosure
- SBD 6.1: Preference Points claim form in terms of the Preferential Procurement Regulations 2022

PROJECT SPECIFICATIONS

TENDERS ARE HEREBY INVITED FROM SERVICE PROVIDERS FOR THE SUPPLY, DELIVERY AND OFF-LOADING OF TONERS/CARTRIDGES AT WESTERN TVET COLLEGE ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS.

1. PURPOSE

The purpose of these specifications is to invite qualified companies to supply and deliver the printer cartridges/toners for Western TVET College for a period of three (3) years from the date of award.

2. BACKGROUND

The College operates a Corporate Office and multiple campuses across different locations. The Corporate Office and Randfontein Campus are located in Randfontein. The Westonaria Site is situated in Westonaria, while the Carletonville Campus is in Carletonville. The Krugersdorp Central Campus operates in the Krugersdorp Central Business District and Chamdor, whereas the Krugersdorp West Campus is based in Krugersdorp West. The precise physical addresses of these locations are as follows:

No.	College site	Address
1.	1. Corporate office	42 Johnstone street, Randfontein
2.	2. Randfontein Campus	5 Kiewiet Street, Randfontein
3.	3. Carletonville campus	20 South Street, Carletonville
4.	4. Westonaria campus	109 Botha Street, Westonaria
5.	5. Krugersdorp West Campus	69 Flemming Street, Krugersdorp West
6.	6. Krugersdorp campus	32 Von Brandis Street, Krugersdorp

3. CURRENT PRINTER CARTRIDGES/TONERS SERVICES

The college has an existing agreement with an external service provider for the supply of all printer cartridges/toners used across its various sites. Under the agreement, the service provider is responsible for supplying all types of cartridges/toners required by the college. All deliveries are made exclusively to the Corporate Office. The cartridges/toners are intended for both computer venues and general office use. Employee's from college sites submit their requests for cartridges/toners to the Corporate Office on an as needed basis. The Corporate Office manages the distribution of cartridges/toners to the respective sites to ensure effective oversight and proper management of ICT resources.

4. REQUIREMENTS

No guarantee of any quantities can be given and the service providers will be required to supply the items under this contract, on an as and when required basis during the period of the contract.

5. CONTRACT PRICE ADJUSTMENT

Should no price adjustment or variation clauses be included in the tender documents, the prices tendered will be considered as being firm for the duration of a three (3) year period. The College will not under any circumstances accept, on account of, any increase in the prices tendered during the duration of the contract under any circumstances.

6. ORDERS FOR REQUIREMENTS

During the period of the contract, official orders for College's requirements will be placed with the service provider by the SCM Department. Toners/cartridges should only be supplied under this contract on receipt of official orders.

7. SABS ASSESSMENT CERTIFICATE

Should a tenderer not be a SABS permit holder, a SABS assessment certificate not older than twelve (12) months to the effect that his quality management system, manufacturing facilities and quality control comply with the requirements of SABS must be submitted with the tender.

8. CONTRACT PERIOD

The contract term shall commence on the date of award and shall remain in effect for three (3) years.

9. SCOPE OF WORK OVERVIEW

The College invites qualified service providers to submit bids for the supply and delivery of printer cartridges/toners. All equipment must be certified by the Original Equipment Manufacturer (OEM).

Only genuine, high quality, original products are acceptable. No refilled or remanufactured cartridges/toners will be allowed. A response/ delivery time of five (5) working days after an order is placed must be guaranteed.

10. SERVICE LEVEL AGREEMENT (SLA)

The bidder will enter into an SLA that will be used to monitor and manage the service. The acceptance of any proposal shall only be confirmed with the conclusion of a written service level agreement between the College and the successful service provider, in terms of which the rights and duties of the parties are recorded, which agreement shall regulate the relationship between the parties.

Until such time that an appropriate service level agreement has been concluded between the TVET College and the successful service provider, no rights shall be conferred, nor shall any legitimate expectations be conferred to the successful Service Provider to carry out the works or services provided for in this call for proposals

11. PRINTER DESCRIPTION AND TONERS/CARTRIDGES

PRINTER DESCRIPTION	CARTRIDGE/TONER
HP LaserJet Pro 400 MFP m425dn	05A-CE505A
Brother DCP-T710W	BT 5000M
	BT 5000C
	BT 5000Y
	BT D60 BK
Brother HL-6400DW	TN 3467
Brother HL-L6210DW	DR 3607
Brother HL-L5710DW	DR 3607
Brother HL-L8390CDW	DR 279CL BLACK
	DR 279CL BLUE
	DR 279CL YELLOW
	DR 279CL MAGENTA
Canon ImageRunner Advanced DX C3930i	C-EXV 64 BK
	C-EXV 64 C
	C-EXV 64 M
	C-EXV 64 Y
HP LaserJet Pro MPF MA77fdw	CF410A
	CF411A
	CF412A
	CF413A
HP LaserJet Pro MFP M425dn	80A-CF280A
HP LaserJet Pro M402dn	26A-CF226A
HP Color LaserJet Pro M255dw	<u>207A</u> W2210A
	<u>207A</u> W2211A
	<u>207A</u> W2212A
	<u>207A</u> W2213A
HP LaserJet Pro M283Fdw	59A-CF259A
HP LaserJet Pro 4003dn	151A
HP Laser 107w	106A
HP Color LaserJet M254dw	<u>203A</u> CF540A
	<u>203A</u> CF541A
	<u>203A</u> CF542A
	<u>203A</u> CF543A
Lexmark MS410 dn	505XE

12. Functionality Evaluation Criteria

The below mentioned criteria regarding Functionality is required for responsiveness and therefore eligibility for the next stage of evaluation. This is done to determine the ability of each tenderer to successfully execute the contract according to specifications. Failure to score minimum of 21 out of 30 points will lead to non-compliance and non-responsiveness.

These criteria shall only determine whether a tender will further be evaluated and will not influence the points scored on Price. If any criterion is rated zero (0) points, the tenderer will be rejected, even if the required 21 out of 30 points are achieved.

For purposes of comparison and in order to ensure meaningful evaluation, bidders are requested to furnish detailed information in substantiation of compliance to functionality criteria mentioned and shall only determine whether a tender will further be evaluated.

No.	CRITERIA	Weight	Minimum
1.	<p>Attach letter of intent from Distributor / manufacturer confirming that the tenderers will be able to supply cartridges mentioned in the scope of work. The letter must be on a company letterhead, signed and dated. Failure to submit the above letter, the tenderers will be disqualified.</p> <p>Provide OEM certificates / Reseller letters/Agreement</p>	10	10
2.	<p>Relevant track record, and experience in supplying and delivering printer cartridges/toners.</p> <ul style="list-style-type: none"> • 3 to 4 reference letters = 06 points • 5 to 7 reference letters = 08 points • 8 reference letters = 10 points • Non-submission will lead to zero scoring. <p>Attach completed purchase order/s with corresponding delivery note/s for cartridges, NOT older than a year.</p>	10	06
3.	<p>Resources and facilities available to execute this project, that is:-</p> <p>Delivery vehicle One (1) Ton bakkie</p> <p>Owned vehicle (with proof of registration document (10 points).</p> <p>OR</p> <p>Hired Vehicle (Attach letter of intent to hire duly signed by the owner and must be on a company letterhead. (05 points)</p>	10	05
	Total	30	21

13. PRICING SCHEDULE

NO	PRINTER DESCRIPTION	CARTRIDGE/TONER	ESTIMATED QUANTITY	YEAR 1		YEAR 2		YEAR 3	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1.	HP LaserJet Pro 400 MFP m425dn	05A-CE505A	400						
2.	Brother DCP-T710W	BT 5000M	150						
		BT 5000C	150						
		BT 5000Y	150						
		BT D60 BK	150						
3.	Brother HL-6400DW	TN 3467	150						
4.	Brother HL-L6210DW	DR 3607	3000						
5.	Brother HL-L5710DW	DR 3607	3000						
6.	Brother HL-L8390CDW	DR 279 BLACK	400						
		DR 279 BLUE	400						
		DR 279 YELLOW	400						
		DR 279 MAGENTA	400						
7.	Canon Advanced DX C3930i	C-EXV 64 BK	3000						
		C-EXV 64 C	3000						
		C-EXV 64 M	3000						
		C-EXV 64 Y	3000						
8.	HP LaserJet Pro MPF MA77fdw	CF410A	500						
		CF411A	500						
		CF412A	500						
		CF413A	500						
9.	HP LaserJet Pro MFP M425dn	80A-CF280A	3000						
10.	HP LaserJet Pro M402dn	26A-CF226A	3000						

NO	PRINTER DESCRIPTION	CARTRIDGE/TONER	ESTIMATED QUANTITY	YEAR 1		YEAR 2		YEAR 3	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
11.	HP Color LaserJet Pro M255dw	207A W2210A	400						
		207A W2212A	400						
		207A W2213A	400						
12.	HP LaserJet Pro M283Fdw	59A-CF259A	3000						
14.	HP LaserJet Pro 4003dn	151A	300						
15.	HP Laser 107w	106A	150						
16.	HP Color LaserJet M254dw	203A CF540A	400						
17.		203A CF541A	400						
18.		203A CF542pA	400						
19.		203A CF543A	400						
20.	Lexmark MS410 dn	505XE	150						
				Subtotal		Subtotal		Subtotal	
				15% VAT		15% VAT		15% VAT	
				Total		Total		Total	

	Bidder's Signature
The bidder be held liable to deliver within three to five (3–5) working days after the receipt of the official order.	

Signature of person authorized to sign a quotation: _____

Date: _____

PART A

INVITATION TO BID

SBD 1

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF WESTOL TVET COLLEGE					
BID NUMBER:	WTC (TC/IT) 05/2025	CLOSING DATE:	14 OCTOBER 2025	CLOSING TIME:	11:00
DESCRIPTION	TENDERS ARE HEREBY INVITED FROM SERVICE PROVIDERS FOR SUPPLY, DELIVERY, INSTALLATION, LEASING AND MAINTENANCE OF PHOTOCOPIER MACHINES FOR WESTERN TVET COLLEGE FOR A PERIOD OF THIRTY-SIX (36) MONTHS.				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					

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

WESTERN TVET COLLEGE					
42 JOHNSTONE STREET, 1760					
HECTORTON, HOMELAKE					
RANDFONTEIN					
1760					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	Yes <input type="checkbox"/> No <input type="checkbox"/>		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL CLARIFICATION QUERIES MAY BE DIRECTED TO:	
DEPARTMENT/ DIVISION	Supply Chain Management Unit	CONTACT PERSON	Gloria Mphago
CONTACT PERSON	Kefilwe Jobeta	TELEPHONE NUMBER	011 692 4004 / 1002
TELEPHONE NUMBER	011 692 4004 /1080	FACSIMILE NUMBER	011 692 3404
FACSIMILE NUMBER	011 692 3404	E-MAIL ADDRESS	gmpphago@westcol.co.za
E-MAIL ADDRESS	kjobeta@westcol.co.za		

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:
<p>1.1 BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>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.</p> <p>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.</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>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.</p> <p>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."</p>
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
<p>3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.5 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.6 IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>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.</p>

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:

SBD4

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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.

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.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members /partners or any person having a controlling interest¹ in the enterprise, employed by the state?

YES/NO

2.1.1 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 institution

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

YES/NO

2.2.1 If so, furnish particulars:

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

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

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

2.3.1 If so, furnish particulars:

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

3 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:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 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 consortium² will not be construed as collusive bidding.
- 3.4 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 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.
- 3.4 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.
- 3.5 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.
- 3.6 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 2004or any other applicable legislation.

2 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 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.

.....
Signature

.....
Date

.....
Position

.....
Bidding entity

WESTERN TVET COLLEGE

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

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

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

1. GENERAL CONDITIONS

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

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

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

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

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

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

	Points
Price	80
Specific Goals	20
Total Points for Price and Specific Goals	100

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

1.6 The organ of state reserves the right to request a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price tenders, competitive tendering process or any other method envisaged in legislation.
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts.
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the

time of bid invitation, and includes all applicable taxes.

- “tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
 - (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.
 - (g) **“consortium or joint venture”** means an association of person for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
 - (h) **“contact”** means the agreement that results from the acceptance of a bid by an organ of state.
 - (i) **“EME”** means an Exempted Micro Enterprise as defined by Codes of Good Practice issued in terms of section 9 (1) of the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
 - (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, the execution of the contract;
 - (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, considering, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder.
 - (l) **“non-firm prices”** means all prices other than “firm” prices;
 - (m) **“person”** includes a juristic person.
 - (n) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good Practice issued in terms of section 9 (1) of the Broad- Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
 - (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of the bid invitations, and includes all applicable taxes and excise duties.
 - (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to] support such primary contractor in the execution of part of a project in terms of the contract
 - (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9 (1) of the Broad-Based Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007.
 - (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES POINTS AWARDED FOR PRICE

THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

80/20 or **90/10**

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

) Where

Ps = Points scored for price of tender under

consideration Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1 In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of:

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed. (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Price	X	80	X	
Within boundaries of Gauteng Province	X	10	X	
Outside boundaries of Gauteng Province	X	0	X	
Youth owned enterprises (persons younger than 35 years)	X	05	X	
Race: Black	X	05	X	

4. DECLARATION WITH REGARD TO COMPANY/FIRM

- 4.1 Name of company/firm.....
- 4.2 VAT registration number.....
- 4.3 Company registration number.....
- 4.4 TYPE OF COMPANY/ FIRM
 - Partnership/Joint Venture / Consortium
 - One person business/sole propriety
 - Close corporation
 - Company
 - (Pty) Limited
 - [TICK APPLICABLE BOX]

DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

4.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

4.7 MUNICIPAL INFORMATION

Municipality where business is situated.....

Registered Account Number:

Stand Number.....

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

4.9 I/we, the undersigned, who is / are duly authorized to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information provided 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 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

5. Previous experience

Provide the following information on relevant previous experience (indicate specifically projects of similar or larger size and/or which is similar with regard to type of work).

Description	Value (R, Vat excluded)	Year(s) executed	Reference		
			Name	Organization	Tel no

6. Staffing Profile

Provide information on key staff you intend utilizing on this contract, should it be awarded to you.

Name	Position in your organization	Qualifications	Experience

7. Infrastructure and resources available to execute this contract

7.1 Physical facilities

Description	Address	Area (m ²)

7.2 Plant and equipment

Description: Plant and equipment owned (or to be rented)	Number of units

7.3 List of shareholders by Name, Position, Identity number, Citizenship, HDI status and ownership as relevant.

Name	Date/Position Occupied in Enterprise	ID Number (please attach certified copies of ID's)	Date RSA Citizenship obtained.	HDI	Women	Disabled	Youth (person not older than 35 years of age)	% of business/ enterprise owned

7.4 List of shareholders by Name, percentage (%) of business/enterprise owned, residential address.

Full Name	Identity (ID) number (Please find attached certified copies of ID's)	% of business / enterprise owned	Residential Address

AUTHORITY FOR SIGNATORY

Please note that sole proprietors or “one person business” are not required to submit an official and duly signed authority of signatory.

Signatories for close corporations and companies shall confirm their authority by sign on behalf of the company/firm **by attaching to this page** a duly signed and dated copy of the relevant resolution of their members or their board of directors, as the case may be.

An example for a company is shown below:

Printed on company letterhead:

“By resolution of the board of directors passed on _____ 20_____

Mr _____

has been duly authorized to sign all documents in connection with the bid for

Tender _____ No _____ and any Contract, which may arise there from on behalf of

SIGNED ON BEHALF OF THE COMPANY _____

IN HIS CAPACITY AS _____ CAPACITY AS _____

DATE: _____

SIGNATURE OF SIGNATORY: _____

AS WITNESSES: 1 _____

2 _____

9. I/we, the undersigned, who is / are duly authorized to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 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 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution

SIGNATURE(S) OF TENDERER(S)
SURNAME AND NAME:
DATE:
ADDRESS:
.....
.....

SPECIAL CONDITIONS OF CONTRACT (“SCC”) FOR THE PROVISION OF GOODS OR SERVICES

1. INTERPRETATION AND DEFINITIONS

1.1 In this **SCC** and the **GCC**, unless clearly inconsistent with or otherwise indicated by the context, the following words, terms or phrases have the following meanings:

- 1.1.1 “**This Agreement**” means the documents specified in clause 5 of the Contract Form, in that order of priority.
- 1.1.2 “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in South Africa.
- 1.1.3 “**Confidential Information**” means the terms of **this Agreement**, any information concerning either party or its stakeholders and customers including its operations, business and financial affairs and all other matters which relate to the business of either party and in respect of which information is not readily available in the ordinary course of the business to a competitor of such party or to any third party, proprietary information or secret information.
- 1.1.4 “**Created Intellectual Property**” means all copyright works, inventions, improvements to inventions and novel designs whether or not registrable as designs or patents including any development or improvement to equipment, technology, methods, processes or techniques made by or on behalf of **the Supplier** during, in connection with or arising out of the provision of **the Goods**.
- 1.1.5 “**Effective Date**” means the date of signature of **this Agreement** by the authorised representative of **WESTCOL**.
- 1.1.6 “WESTCOL” means the Western College for FET, a juristic person established in terms of the FET Act 16 of 2006 (as amended 2012), as well as its successor in title and any other juristic person to whom **WESTCOL’s** rights and obligations may be assigned and devolve upon.
- 1.1.7 “**Goods**” means the goods and / or services specified in **the Specification**, read with the Bidder’s Proposal.
- 1.1.8 “**Intellectual Property Rights**” means all rights in and to the intellectual property including, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned.
- 1.1.9 “**Implementation Date**” means the date on which the provision of **the Goods** commences.
- 1.1.10 “**Performance Undertakings**” means the **Performance Undertakings** as set out in **the Specification**.
- 1.1.11 “**Service Level Breach**” means a failure by **the Supplier** to maintain a target specified in respect of one or more of the **Performance Undertakings**.
- 1.1.12 “**The Specification**” means **the Specification** attached to the tender document at

section 5 of the tender document.

- 1.1.13 “**Supplier**” means the party described as such in the **Contract Form**, or in lieu of a **Contract Form** the party described as **the Supplier** in the Purchase Order issued by **WESTCOL** (whichever is applicable).
- 1.2 Any reference to the singular includes the plural and vice versa.
- 1.3 Any reference to natural persons includes legal persons and vice versa.
- 1.4 Any reference to a gender includes the other gender/s.
- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Where any number of days is prescribed in this Agreement same shall be considered to be calendar days and reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.7 The use of the word "including" or "includes" followed by a specific example 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.
- 1.8 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.9 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.10 Records shall be binding on the parties and are not for information purposes only.
- 1.11 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.12 To the extent that there is a conflict between the provisions of the documents that form part of this Agreement, such conflict shall be decided with reference to the preference of documents as contained in the Contract Form.
- 1.13 Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this Agreement applies shall be interpreted in accordance with their generally known meanings in such industry.
- 1.14 Any reference to any statute or statutory regulation shall include a reference to any amendments thereto and to the successor/s in title to such statutes and statutory regulations.
- 1.15 Any reference to any organisation, institution, office, body, department, organ or person vested with certain powers and authority shall include a reference to its successor/s in title.

- 1.16 The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.17 If any provision in a recodal, preamble or definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement.
- 1.18 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 1.19 Wherever the GCC refer to the SCC, such reference shall be read to include reference to the Specification.

2. RECORDAL

- 2.1 The SCC is WESTCOL'S standard terms and conditions of contract and constitutes part of this Agreement between WESTCOL and the Supplier, or in lieu of a Contract Form, constitutes part of the Purchase Order issued by WESTCOL to the Supplier (whichever is applicable).
- 2.2 The details and requirements of **the Goods** to be provided to **WESTCOL** are contained in **the Specification** and any additions or amendments thereto furnished to **the Supplier** during the procurement process. It is recorded that **the Supplier** has accepted these provisions.

3. DURATION

- 3.1 This Agreement shall come into effect on the Effective Date and, unless terminated in accordance with the provisions of this Agreement, shall endure for the term of this Agreement specified in the Specification, calculated from the Implementation Date.
- 3.2 **The Supplier** acknowledges and agrees that any and all work performed prior to the **Effective Date** and all work performed after the expiry of the term of **this Agreement**, shall be at **the Supplier's** sole risk and **the Supplier** shall be without recourse against WESTCOL.

4. WARRANTY

4.1 **The Supplier warrants that:**

- 4.1.1 has the capacity to execute, deliver and undertake its obligations in terms of this Agreement and all the necessary corporate and other action has been taken to authorise the aforementioned execution, delivery and undertaking.
- 4.1.2 it is fully experienced and properly organised, financed, equipped, manned, qualified, licensed and able to fulfil its obligations under **this Agreement**.
- 4.1.3 the provision of **the Goods** will be undertaken by appropriately experienced and suitably qualified employees in a proper and professional manner, in accordance with all applicable laws including the Occupational Health and Safety Act, 1993, good industry practice and its own as well as **WESTCOL's** established

internal procedures.

- 4.1.4 it shall provide **the Goods** or parts thereof as the case may be, by the relevant dates.
- 4.1.5 **the Goods** shall:
 - 4.1.5.1 be free from defects due to materials and/or workmanship.
 - 4.1.5.2 comply with **the Specification**.
 - 4.1.5.3 be fit for the purpose for which it is being acquired by **WESTCOL**.
 - 4.1.5.4 not infringe any rights of any third party including intellectual property rights.
 - 4.1.5.5 comply with all lawful and reasonable standards, rules and requirements set by any Authority and shall not contravene any law or any regulation of any nature whatsoever.
- 4.2 The Supplier acknowledges that WESTCOL has entered into this Agreement relying on the warranties contained in this paragraph and elsewhere in this Agreement.
- 4.3 **The Supplier** undertakes to make good by repair or replacement defects in **the Goods**, or any part thereof as the case may be, arising from any cause whatsoever, after being notified of the defect by **WESTCOL** and within the time period specified by **WESTCOL** in the aforementioned defects notice.
 - 4.3.1 All costs connected to repairs and/or replacement in terms of this paragraph, including costs in respect of the transport and handling of goods incidental to **the Goods**, between **the Supplier's** premises and **WESTCOL's** premises, shall be the responsibility of **the Supplier**.
 - 4.3.2 If **the Supplier** repairs or replaces any equipment, materials or workmanship this provision will also then apply to the repaired or replaced equipment, materials and workmanship for an additional period equal to the warranty period contained in the **GCC** but commencing from the date the repairs or replacement was accepted in writing by WESTCOL and the aforesaid warranty period will be extended accordingly.
 - 4.3.3 It is recorded for the sake of clarity that should **the Supplier** fail to make good by repair or replacement of any defect as contemplated above within the time period stipulated by WESTCOL in the defects notice, WESTCOL shall be entitled to enforce and call upon the performance security.
- 4.4 **The Supplier** acknowledges that the provision of the Goods includes all activities and responsibilities specifically referred to in **this Agreement** as well as activities and responsibilities not mentioned herein which are necessary for proper provision thereof.

5. SUPPLIER'S RESPONSIBILITIES AND OBLIGATIONS

- 5.1 The **Supplier** must:
 - 5.1.1 manufacture and supply the **Goods** in compliance with the terms and conditions of **this Agreement**.

- 5.1.2 attend to the delivery of the **Goods** on working days during working hours unless **the Purchaser** agrees otherwise in writing. If **the Supplier** wishes to attend to the delivery of the **Goods** outside of working hours or on **Days** that are not working days, **the Supplier** must obtain the prior written approval of **the Purchaser**. The grant of such approval is in **the Purchaser's** discretion.
- 5.1.3 inform itself fully of the requirements of **the Purchaser** in respect of the manufacture and supply of the **Goods**.
- 5.1.4 comply with all reasonable directions of **the Purchaser** relating to the manufacture and supply of the **Goods**.
- 5.1.5 ensure that the manufacture and supply of the **Goods** reach the required status by the relevant dates, as required by **this Agreement**.
- 5.1.6 ensure that the **Goods** are supplied at the stipulated address to **the Purchaser's** satisfaction by the relevant dates. **The Supplier** acknowledges that time is of the essence for the supply of the **Goods**.
- 5.1.7 provide **the Purchaser's** employees with training in the operation and maintenance of the **Goods**, if applicable.
- 5.1.8 provide **the Purchaser** with comprehensive details regarding the **Goods** including replacement and overhaul frequency, as well as recommended spare parts (if applicable).
- 5.1.9 provide **the Purchaser** in writing with details of any deviation in the **Goods** from the approved design.
- 5.1.10 provide all equipment, apparatus, appliances and/or materials necessary for the manufacture and supply of the **Goods** subject to the following:
 - 5.1.10.1 all such equipment, apparatus and/or appliances must be in good working order and suited for the purpose for which they are used; and
 - 5.1.10.2 on request and at **the Supplier's** own expense provide **the Purchaser** with samples of all materials to be used. If testing shows that the material/s do not comply with the required **Specification**, then the costs of the testing shall be paid by **the Supplier** and **the Supplier** shall replace the material with material that complies with the required specifications.
- 5.1.11 provide appropriately qualified, competent, skilled and experienced employees for undertaking the manufacture and supply of the Goods and deliver to the Purchaser information regarding the Supplier's employees on the Purchaser's request.
- 5.1.12 ensure that its employees are fully acquainted with all the obligations and responsibilities of the **Supplier** contained in this **Agreement**; provide **the Purchaser** with a list of the names of the permanent employees employed for the performance of the manufacture and supply of the **Goods**, when requested to do so by **the Purchaser**.
- 5.1.13 comply with all reasonable directions of **the Purchaser** relating to the manufacture and supply of the **Goods** including acceleration of the manufacture and supply or any activities relating thereto, suspension of the manufacture and supply or any activities relating thereto, resuming of performance of the manufacture and supply or such activities and/or rescheduling and/or reprogramming of the manufacture and supply.

- 5.1.14 provide information to **the Purchaser** on request, concerning the manner and timing of the manufacture and supply of the **Goods**.
- 5.1.15 on becoming aware of any matter which may delay the manufacture and supply of the **Goods**, promptly, but in any event no later than 3 (three) **Days** after becoming aware of the potential delay, give written notice to **the Purchaser** with detailed particulars of the cause of the delay, extent of the delay and steps taken to minimise the effect of the delay. In addition, and at its own cost, comply with all measures specified by **the Purchaser** to reduce the effects of the delay including increasing resources employed.
- 5.1.16 consult with **the Purchaser** throughout the manufacture and supply of the **Goods** and supply any documentation reasonably requested and/or required by **the Purchaser** to use and/or operate the **Goods** including any licences including software licences (if applicable).
- 5.1.17 provide **the Purchaser** with copies of all relevant documents and/or licences issued by the authorities that relate to or are connected to the manufacture and supply of the **Goods**.
- 5.1.18 undertake the manufacture and supply of the **Goods** with the professional skill, care and diligence expected of a service provider experienced in the particular activities that are the subject of **this Agreement**.
- 5.1.19 maintain records, for a period of 5 (five) years from the end of the warranty period, and control systems that conform to the norms and standards generally accepted as good practice in the industry applicable to **the Supplier**.
- 5.1.20 if requested, provide a schedule to **the Purchaser** demonstrating **the Supplier's** resources available for the manufacture and supply of the **Goods** and to meet the dates and performance requirements listed in **the Specification**, including information regarding how **the Supplier** intends to use those resources.
- 5.1.21 arrange its activities in order to ensure that there is no danger and the least possible inconvenience caused to the public as well as the prevention of unnecessary noise or pollution or interference with public services or access to use and occupation of public roads or facilities; and
- 5.1.22 at all times act in the best interest of **the Purchaser** and avoid all conflict of interest that may arise.

6. RISK AND OWNERSHIP

- 6.1 Without derogating from the **Supplier's** obligations in terms of this **Agreement**, including in respect of remedying of defects, risk and ownership in respect of the **Goods** shall pass to the **Purchaser** once the supply and delivery of the **Goods**, as per the requirements of this **Agreement**, has been completed to the **Purchaser's** satisfaction, provided that in the event that the **Goods** are defective in whatever way and/or the **Supplier** fails to comply with the packaging and/or other requirements set out in the **Specification**, it shall be deemed that the risk in respect of such **Goods** has not so passed and the **Supplier** shall bear the risk in respect of such **Goods**.

7. SUBCONTRACTING

- 7.1 **The Supplier** shall not subcontract to any third party ("**Subcontractor**") any portion of **the Goods** that must be provided under **this Agreement** without **WESTCOL's** prior written

consent.

7.2 **WESTCOL** shall not be under any obligation to consent to a request by **the Supplier** to subcontract to a **Subcontractor** any portion of **the Goods** that must be provided under **this Agreement**.

7.3 **WESTCOL** shall, when giving consideration to a request contemplated in this clause 7, take into consideration the following aspects pertaining to the **Subcontractor**:

7.3.1 An original B-BBEE Status Level Verification Certificate in respect of the **Subcontractor**, issued by an accredited verification agency, alternatively a certificate issued by the accounting officer (in respect of a close corporation) or auditor (in respect of a company) that the **Subcontractor** is an EME, furnished to **WESTCOL** by **the Supplier**.

7.3.2 An original Declaration of Interest completed and signed by the **Subcontractor** and furnished to **WESTCOL** by **the Supplier**; and

7.3.3 An original Tax Clearance Certificate in respect of the **Subcontractor** and furnished to **WESTCOL** by **the Supplier**.

7.4 **WESTCOL** may, if **WESTCOL** elects to approve a request contemplated in clause 7.1 above make such consent subject to such terms and conditions as **WESTCOL** in its sole discretion considers reasonable.

7.5 Notwithstanding that **WESTCOL** may elect to consent to a request contemplated in clause 7.1 above, such consent by **WESTCOL** shall not relieve **the Supplier** of any of **the Supplier's** obligation under **this Agreement** and **the Supplier** shall remain responsible for the actions and omission of the **Subcontractor**.

8. NON-PERFORMANCE OF THE SUPPLIER

8.1 In the event of **the Supplier** not meeting the performance standards set by **the Purchaser**, **the Purchaser** shall be entitled to call upon **the Supplier** by written notice to remedy the situation.

8.2 Should **the Supplier** fail to remedy the defective performance within 14 (fourteen) **Days** of **the Purchaser** dispatching the aforesaid notice, **the Purchaser** shall be entitled to cancel **this Agreement** forthwith and without further notice to **the Supplier**.

8.3 Following cancellation, **the Purchaser** shall be entitled to employ the services of an alternative supplier for the portion of the **Goods** that **the Supplier** has failed to supply, or which do not meet **the Purchaser's** performance standards. Any additional costs related to the employment of an additional supplier shall be for **the Supplier's** account. **The Purchaser** shall be entitled to call upon **the Supplier's** performance security in order to cover such additional costs.

8.4 Should **the Supplier** fail to meet the set performance standards, **the Purchaser** shall be

entitled to cancel any outstanding payment due to **the Supplier** in terms of **this Agreement**.

9. PAYMENT

- 9.1 An original and detailed tax invoice must be submitted after **WESTCOL** has acknowledged receipt of **the Goods** provided in writing.
- 9.2 The amount invoiced must be:
- 9.2.1 inclusive of VAT.
 - 9.2.2 inclusive of all other taxes and duties which are levied or charges by any revenue authority.
 - 9.2.3 inclusive of all costs and disbursements; and
 - 9.2.4 fixed.
- 9.3 A correct and original tax invoice must be submitted to **WESTCOL** by the 1st (first) calendar day of each month.
- 9.4 All supporting documentation, including but not limited to monthly statements (where applicable) and a verification of bank details, must be received before payment can be affected.
- 9.5 **The Supplier** shall be required to verify its bank account details by furnishing **WESTCOL** with a letter from its bank with a bank stamp, alternatively it shall furnish **WESTCOL** with a cancelled cheque.
- 9.5.1 The following bank details must be verified:
 - 9.5.1.1 Account Holder and any Trading Names
 - 9.5.1.2 Bank Name
 - 9.5.1.3 Branch Name
 - 9.5.1.4 Branch Code
 - 9.5.1.5 Account Number
 - 9.5.1.6 Type of Account
- 9.6 Payment will be made by **WESTCOL** within 30 (thirty) days of receipt of the invoice from **the Supplier**, on condition that the invoice is correct and contains all the information required by **WESTCOL**.
- 9.7 **WESTCOL** may deduct and set off against any Payment due to **the Supplier** in terms of **this Agreement** any amount due or which may become due to it by **the Supplier** under **this Agreement** or otherwise as well as any Penalties not reflected in the invoice. This shall not prevent **WESTCOL** from separately recovering from **the Supplier** any debt owed by **the Supplier** to **WESTCOL** under **this Agreement**.
- 9.8 If an invoice and supporting documentation is submitted to **WESTCOL** after the 1st (first) calendar day of the month it shall only be paid by the end of the following month.
- 9.9 Should the documentation be incomplete, incorrect or late, payment shall only be affected

once the correct and complete documents are received and only when **WESTCOL** is able to confirm the correctness of the amounts being invoiced. Payment shall then be made in terms of the provisions of this clause. No penalty interest shall be permitted to be charged by **the Supplier** in this event.

9.10 **The Supplier** acknowledges that the pricing specified in **this Agreement** is intended to compensate **the Supplier** fully for all **Services** provided pursuant to **this Agreement**. Accordingly, **WESTCOL** will not be obliged to pay **the Supplier** any amounts in addition to those specifically described in **this Agreement**.

9.11 Payment shall be affected by electronic bank transfer, or any other method of payment decided to be used by **WESTCOL** from time to time and at **WESTCOL's** sole discretion.

9.12 Value Added Tax (VAT) shall be charged on all invoices, which must include **the Supplier's** VAT registration number, in terms of the Value Added Tax legislation applicable in the Republic of South Africa.

10. PENALTIES

10.1 **The Supplier** acknowledges that **WESTCOL** will be prejudiced should **the Supplier** fail to strictly comply with the terms of **this Agreement** and **the Specifications**

10.2 In the event that **the Supplier** fails to strictly comply with the terms of **this Agreement** and **the Specification**, **WESTCOL** shall be entitled to levy the penalties stipulated in **the Specification**.

10.3 Notwithstanding anything to the contrary, **WESTCOL** may in its sole discretion elect to waive a penalty and pursue a claim for damages instead.

10.4 **The Supplier** shall credit **WESTCOL** with the penalties due to **WESTCOL** for a particular month in the invoice issued for payment in respect of that month. If all outstanding invoices have already been paid by **WESTCOL**, **WESTCOL** shall be entitled to payment of the penalties due within 30 days of demand on **the Supplier** by **WESTCOL**.

10.5 **WESTCOL** shall be entitled to call on the performance security in order to recover penalties from **the Supplier**.

11. CONFIDENTIAL INFORMATION

11.1 The parties shall hold in confidence all **Confidential Information** received from each other and not divulge the **Confidential Information** to any parties, including any of their employees, agents, consultants and sub-contractors directly, unless the parties are involved with the execution of **this Agreement** and then only on a need-to-know basis.

11.2 The parties shall prevent disclosure of the **Confidential Information**, except as may be required by law.

- 11.3 The parties agree that they shall protect each other's **Confidential Information** using the same standard of care that each party applies to safeguard its own **Confidential Information** and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 11.4 Within thirty (30) days after the termination of **this Agreement**, for whatever reason, the receiving party of **Confidential Information** shall return same or at the discretion of the disclosing party of such **Confidential Information**, destroy such **Confidential Information**, and shall not retain copies, samples or excerpts thereof.
- 11.5 The disclosing party of **Confidential Information** may at any time request the receiving party of such **Confidential Information** to return any material containing, pertaining to or relating to **Confidential Information** disclosed pursuant to the terms of **this Agreement**, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either directly or indirectly any such material.
- 11.6 As an alternative to the return of the material contemplated in 11.5 above, the receiving party shall at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.
- 11.7 The receiving party shall comply with the request in terms of clauses 11.5 and 11.6, within fourteen (14) days of receipt of same.
- 11.8 It is recorded that the following information shall, for the purpose of **this Agreement**, not be considered to be **Confidential Information**:
- 11.8.1 Information known to the receiving party prior to the date that it was disclosed to it by the other party; or
- 11.8.2 Information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or
- 11.8.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such Information; or
- 11.8.4 Information which either of the parties, in writing, authorises the other to disclose.
- 11.9 For the avoidance of any doubt, no provision of **this Agreement** should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the **Confidential Information** in the event that the receiving party receives the request for the whole or any part of the **Confidential Information** in terms of the provisions of the Promotion to Access to Information Act No. 2

of 2000.

11.10 Breach of these obligations shall, without prejudice to any other rights that the parties have in law and or in terms of **this Agreement** entitle **WESTCOL** to recover damages from **the Supplier**.

12. WARRANTIES

12.1 **The Supplier** warrants that **the Goods** supplied by it in terms of **this Agreement** shall be new, unused and fit for their intended purpose.

12.2 Where **the Supplier's Goods** supplied to **WESTCOL** in terms of **this Agreement** include or come with certain warranties or guarantees, these shall be incorporated into **this Agreement** as if specifically mentioned and **WESTCOL** shall receive the full benefits thereof.

12.3 All representations made by **the Supplier** in this regard whether in writing or verbally shall be deemed to be incorporated into **this Agreement** as if specifically stated.

12.4 Where a dispute arises regarding the terms and conditions of such warranties or guarantees and the representations made by **Supplier**, then the standard practice of **the Supplier** in giving such warranties in the normal course of its business shall be deemed to apply as the minimum warranty or guarantee benefits due to **WESTCOL.2**

13. CESSION AND ASSIGNMENT

The Supplier shall not cede, assign, abandon or transfer any of its rights and/or obligations in terms of **this Agreement** (whether in part or in whole) or delegate any of its obligations in terms of **this Agreement**, without the prior written consent of **WESTCOL**.

14. NON-EXCLUSIVE AGREEMENT

WESTCOL is not obliged to make exclusive use of **the Supplier**. Nothing in **this Agreement** shall be interpreted as precluding **WESTCOL** from procuring similar or equivalent products or service from other suppliers.

15. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS AND CONSENSUAL EFFORTS AT RESOLUTION

15.1 **The Supplier** may not make a statement or furnish any information or cause any information to be furnished to any news media, on or regarding any matter relating to the contractual relationship between the parties, except with the prior written permission of the Chief Executive Officer of **WESTCOL**.

15.2 The parties agree that they shall inform each other as soon as possible about any problem relating to the contractual relationship between them that either of them may experience,

and further that they shall make all reasonable effort to resolve any such problem consensually.

16. RELATIONSHIP

This Agreement does not constitute either of the Parties an agent or representative of the other for any purpose whatsoever and neither of the parties shall be entitled to act on behalf of, or to represent, the other unless duly authorised thereto in writing.

17. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 17.1 **WESTCOL** shall not be liable for any damages arising out of death or injuries sustained by **the Supplier's** employees, consultants, agents, representatives or sub-contractors whilst such persons are on any premises or in any vehicle owned by **WESTCOL** or used by **the Supplier** or arising out of any damage or loss of any property belonging to **the Supplier** or any such persons on or in such premises or property, whether such injury or damage or loss is caused by the negligence by **WESTCOL** or any of its employees, consultants, agents, representatives or sub-contractors or by any other cause whatsoever.
- 17.2 **The Supplier** indemnifies **WESTCOL** against any claims that may arise from the performance of its functions and actions in terms of **this Agreement** and that of their employees, consultants, agents, representatives or sub-contractors.
- 17.3 Each party hereby indemnifies the other party against all damages, losses or liabilities caused due to an event which is at its risk or due to its negligence, either contractually or delictually. The liability of each party to indemnify the other party shall be reduced proportionally if the event at the other party's risk or negligence contributed to the damage, loss or liability.
- 17.4 **The Supplier** shall ensure that it and its employees, consultants, agents, representatives and subcontractors concerned do not in any way infringe or allow any infringement of any other party's **Intellectual Property Rights** in the performance of this contract, and **the Supplier** hereby indemnifies and holds **WESTCOL** harmless from and against any claims arising against **WESTCOL** as a result of any such infringements by **the Supplier** of such **Intellectual Property Rights**.
- 17.5 Neither party shall be liable towards the other for any indirect or consequential loss of any nature and howsoever incurred.

18. INSURANCE

- 18.1 Without limiting **WESTCOL** liabilities or responsibilities in terms of **this Agreement**, **the**

Supplier shall provide insurance to cover its liabilities and responsibilities in terms of **this Agreement**.

18.2 Notwithstanding anything elsewhere contained in this **Agreement**, **WESTCOL** shall provide at least:

18.2.1 Insurance in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. **The Supplier** shall upon request from **WESTCOL** submit proof to the satisfaction of **WESTCOL** that **the Supplier** is insured under the Compensation for Occupational Injuries and Diseases Act by providing **WESTCOL** with adequate proof stating that it has paid all assessments due.

18.2.2 Insurance covering legal liability in respect of claims for death of/or injury to persons or loss of/or damage to third party property.

18.2.3 Motor vehicle liability insurance in respect of all motor vehicles brought onto the premises of **WESTCOL**.

18.3 **WESTCOL** shall have the right to examine the policies maintained by **the Supplier** at any time during the term of **this Agreement**.

19. OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (“OHS Act”)

19.1 Without derogating from the generality of the obligations set out in **this Agreement**, **the Supplier** undertakes and warrants that it shall in respect of all activities conducted in respect of **this Agreement**:

19.1.1 at all times comply with the provisions of the OHS Act.

19.1.2 acquaint all its employees with the provisions and requirements of the OHS Act.

19.1.3 not endanger the health and safety of any of its or **WESTCOL’s** employees in any way whilst provided **the Goods** and/or are present at **WESTCOL’s** premises.

19.1.4 accepts responsibility for compliance with the duties, obligations and prohibitions imposed by the OHS Act and expressly absolves **WESTCOL** from being obliged to comply with any of the aforesaid duties, obligations and prohibitions relating to the provision of **the Goods**; and

19.1.5 shall assume the responsibility of an employer in terms of the OHS Act and, if **the Supplier** assigns any duty as provided for in the OHS Act, shall immediately provide **WESTCOL** with a copy of such written assignment.

19.2 **WESTCOL** shall be entitled to request **the Supplier** to remove any employee, agent, consultant or **Subcontractor** from its team if **WESTCOL** is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the

relationship between the parties. Such a person must be removed by **the Supplier** within the time period stipulated by **WESTCOL**. **The Supplier** indemnifies **WESTCOL** against any claims that might arise due to such removal.

20. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS

- 20.1 **The Supplier** shall not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of **WESTCOL's** employees, consultants or subcontractors.
- 20.2 Such an act shall constitute a material breach of **this Agreement** and **WESTCOL** shall be entitled to terminate **this Agreement** forthwith, without prejudice to any of its rights in terms of **this Agreement** or in law.

21. MEETINGS

- 21.1 If the nature of **the Goods** provided to **WESTCOL** dictate it, authorised representatives of the parties must attend periodic meetings at such intervals as such representatives may agree from time to time but in any event not less than once every two weeks. The meetings shall take place at the location and at such times as the representatives may agree.
- 21.2 Each party's representatives shall be entitled to place such items which they intend discussing at a meeting on the agenda for the meeting and shall give the representatives of the other party notice of all such items by no later than 16h00 two (2) days preceding the day on which the meeting is to be held.
- 21.3 **The Supplier** shall not be entitled to payment from **WESTCOL** for time spent attending the aforementioned meetings.

22. CHANGE ORDER

- 22.1 In **this Agreement** "**Change Order**" means a document which is used for the specific purpose of recording the details of any amendments, deletions, insertions or additions to **this Agreement** and which shall be signed by the authorised representatives of both parties before becoming effective and binding on the parties.
- 22.2 Should the parties wish to make any amendment, deletion, insertion or addition to **this Agreement** the parties shall prepare a **Change Order**.
- 22.3 No **Change Order** shall be of any force or effect until it is executed by the duly authorised signatories of each of the parties.
- 22.4 Each executed **Change Order** shall be subject to the terms and conditions contained in **this Agreement**, except as otherwise expressly provided for in such **Change Order** by the parties by specifically stating the parties' intention to amend such terms and conditions of

this Agreement and identifying the specific terms and conditions being amended.

22.5 A unique, sequential, number shall be allocated to each **Change Order**.

22.6 The authorised representative of WESTCOL, for purposes of executing a **Change Order**, is **WESTCOL's** Chief Executive Officer.

22.7 No terms and conditions contained in, without limitation, any purchase order, quote, invoice, statement or similar document, other than a **Change Order** executed in pursuance to this clause 22, shall have the effect of changing any term or condition contained in this **Supplier Agreement**.

23. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS

23.1 **The Supplier** warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations contained in **this Agreement** as well as with all applicable requirements of any government department (whether national, provincial or local), other public authorities and regulating bodies (whether statutory or voluntary), and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained.

23.2 **The Supplier** warrants that any of its undertakings in terms of **this Agreement** do not constitute a contravention in terms of any statute, statutory regulation, other law or regulating body's rules that it is bound by and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

23.3 **The Supplier** furthermore specifically warrants that it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax (PAYE and SITE), value added tax, skills development levies, unemployment insurance **Fund** levies, workmen's compensation **Fund** levies, regional **Services** council levies and all other taxes and levies payable both now or in the future and whether it is liable in the Republic of South Africa or other jurisdictions, and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

23.4 **The Supplier** specifically warrants that it is well acquainted with its obligations as a taxpayer, provisional taxpayer, employer, employee, labour broker, personal service company, personal service trust and the like (as the case may be) and its income tax, employees taxes and levies (SITE, PAYE, UIF, SDL, others) and other tax implications and obligations in terms of the Income Tax Act as a whole and specifically the Fourth Schedule thereto, and their successor/s in title.

23.5 Without limiting in any manner whatsoever the generality of **the Supplier's** above obligations, **the Supplier** shall, for the full and uninterrupted duration of **this Agreement**, ensure that **WESTCOL** is:

23.5.1 Placed in possession of an original, valid, unexpired Tax Clearance Certificate, issued by the

South African Revenue **Services**; and/or

23.5.2 Furnished with a new, original, valid, unexpired Tax Clearance Certificate issued by the South African Revenue Services, not less than 30 (thirty) days prior to the expiry of the Tax Clearance Certificate contemplated in clause 23.5.1 above, in the event of any such Tax Clearance Certificate expiring during the duration of this Agreement.

23.5.3 Notwithstanding anything seemingly to the contrary in **this Agreement**, until **the Supplier** complies fully with its obligation under this clause 23, **WESTCOL** has the right to withhold payment of any unpaid amounts due in terms of **this Agreement**.

23.5.4 Without prejudice to any other rights which **WESTCOL** may have in terms of **this Agreement** or in law; and

23.5.5 Without interest accruing on the amount withheld.

23.6 A breach by **the Supplier** of its obligations under this clause 23 is a material breach which will entitle **WESTCOL**, at its sole election, to cancel **this Agreement** forthwith, without prejudice to any other rights which **WESTCOL** may have in terms of **this Agreement** or in law.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 **The Supplier** agrees to assign to **WESTCOL** absolutely, for the full duration thereof and throughout the world, all of **the Supplier's** right, title and interest in **the Supplier's Created Intellectual Property** on its creation. **The Supplier** undertakes, on request, to do all things and sign all documents necessary to assign the aforementioned rights, title and interest to **WESTCOL** in the **Created Intellectual Property** and necessary to record such assignment at any Office responsible for the registration of **Intellectual Property Rights**.

24.2 If the right, title and interest of any of the **Created Intellectual Property** is not capable of being assigned to **WESTCOL**, **the Supplier** undertakes, on request, to do all things and sign all documents necessary to ensure that **WESTCOL** is granted an irrevocable, fully paid up, royalty free licence to use the **Created Intellectual Property** for the full duration of the right and throughout the world.

24.3 In the event of assignment, **WESTCOL** grants **the Supplier** a licence to use the **Created Intellectual Property** for the performance of **the Goods** in terms of **this Agreement**.

25. BREACH

25.1 In the event of either one of the parties ("***the Defaulting Party***") committing a breach of any of the provisions of ***this Agreement*** and failing to remedy such breach within a period of fourteen (14) days after receipt of a written notice from the other party ("***the Aggrieved Party***") calling upon ***the Defaulting Party*** to remedy the breach complained of, then ***the Aggrieved Party*** shall be entitled at its sole discretion and without prejudice to any of their other rights in law and/or in terms of ***this Agreement***, either to:

25.1.1 Claim specific performance in the terms of ***this Agreement***; or

25.1.2 Cancel ***this Agreement*** forthwith and without further notice and recover damages from ***the Defaulting Party***.

25.2 In the event of ***the Defaulting Party*** being in breach of any provision of ***this Agreement*** and ***the Aggrieved Party*** having to take legal action / dispute resolution action against ***the Defaulting Party*** as a result thereof, ***the Defaulting Party*** shall be liable to pay ***the Aggrieved Party***'s legal costs as well as all expenses which have reasonably been incurred in having to take such legal action, which expenses will include but not be limited to private investigator's fees, tracing agents fees, forensic auditor's fees, valuation fees and such similar professional fees in terms of any court order, arbitration award or settlement agreement (whether legal action was instituted by way of arbitration, in a court of law or other forum, or was resolved prior to any such action having to be taken)

26. TERMINATION

26.1 **WESTCOL** may terminate ***this Agreement***, or suspend its operation, in whole or in part, at any time and at **WESTCOL's** sole discretion, by giving not less than 1 (one) month's written notice to ***the Supplier***.

26.2 **WESTCOL** when giving notice under clause 26.1 shall, in the written notice, specify the extent of the termination or suspension, and the ***Effective Date*** of such termination or suspension.

26.3 ***The Supplier***, upon receipt of a notice contemplated under clause 26.1 shall discontinue the provision of all of the Service under ***this Agreement***, to the extent specified, and on the date specified in the notice.

26.4 In the event of the termination or suspension, in whole or in part, of ***this Agreement*** by **WESTCOL** under this clause 26, **WESTCOL** shall pay ***the Supplier*** for ***Services*** already provided by ***the Supplier*** under ***this Agreement***, up to and including the date of termination or suspension specified in the notice.

26.5 **WESTCOL** shall not be liable for any consequential loss resulting from the termination or

suspension of **this Agreement** by **WESTCOL** under this clause 26, including, without limitation, any loss of profits or any costs associated with the termination or suspension of any sub-contracts entered into by **the Supplier**.

26.6 Termination or suspension of **this Agreement** under this clause 26 shall be without prejudice to any rights that may have accrued to either of the parties, in respect of **Services** provided before the date of termination or suspension, specified in the notice. It is specifically agreed that, upon termination or suspension of **this Agreement** under clause 26, no rights shall accrue to either party in respect of **Services** not yet provided under **this Agreement**.

26.7 **WESTCOL** shall have the right to immediately cancel **this Agreement**, without prejudice to any rights which it may have in law, in the event that **the Supplier** is liquidated, sequestrated or placed under judicial management, business rescue or any other form of management for the benefit of its creditors, whether provisional or final.

27. DISPUTE RESOLUTION

27.1 All disputes concerning or arising out of **this Agreement** exists once a party notifies the other in writing of the nature of the dispute and requires the dispute to be resolved under this clause. All disputes arising out of or in connection with **this Agreement** shall be resolved by:

27.1.1 Negotiation, in terms of clause 27.4; failing which.

27.1.2 Mediation, in terms of clause 27.5; failing which.

27.1.3 Arbitration, in terms of clause 28.

27.2 This clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of the dispute resolution process contemplated in this clause, for which purpose the parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

27.3 This clause constitutes irrevocable consent of the parties to the dispute resolution process in terms hereof and neither of the parties shall be entitled to withdraw therefrom or to claim at any negotiation, mediation or arbitration proceedings that they are not bound by the dispute resolution provisions of **this Agreement**.

27.4 Within ten (10) days of notification by either party that a dispute exists, the parties must seek an amicable resolution to the dispute by referring the dispute to designated and authorized representatives of each of the parties to negotiate and resolve the dispute. If an amicable resolution to the dispute is found the authorized representatives of the parties must sign, within the ten (10) day period, an agreement confirming that the dispute has been resolved.

27.5 If negotiation in terms of clause 27.4 fails, either party may, within fifteen (15) days of the negotiations failing, refer the dispute for resolution by mediation under the rules of the

Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

27.6 The periods for negotiation (specified in clause 27.4) or for referral of the dispute for mediation (specified in clause 27.5), may be shortened or lengthened by written agreement between the parties.

28. ARBITRATION OF DISPUTES

28.1 In the event of the mediation contemplated in clause 27.5 failing either party may refer the dispute, within fifteen (15) days of the mediation failing, for resolution by expedited arbitration under the then current rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

28.2 A single arbitrator shall be appointed by agreement between the parties within ten (10) days of the dispute being referred for arbitration, failing which the arbitrator shall be appointed by the Secretariat of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

28.3 At all times, every reasonable effort shall be made to ensure that such arbitrator has the necessary technical skills to enable him to adjudicate the dispute in a satisfactory manner.

28.4 The arbitration shall be held at Randfontein, South Africa, in English.

28.5 The laws of the Republic of South Africa shall apply.

28.6 The parties shall be entitled to legal representation.

28.7 The award of the arbitrator shall be final and binding on the parties, who hereby agree to give effect to the award. Either party shall be entitled to have the arbitrator's award made an order of court at the cost of the party requesting same.

28.8 This clause 28 read with clause 27 above is a separate, divisible agreement from the rest of **this Agreement** and shall remain in effect even if **this Agreement** terminates, is nullified, or cancelled for any reason or cause.

29. DOMICILIUM AND NOTICE ADDRESS

The parties each choose their *domicilium citandi et executandi* as the address where they will receive service of all legal process and notices at the respective physical addresses given in **this Agreement** or the Purchase Order (whichever is applicable).

30. NOTICE

30.1 All notices, correspondence and any other communication between the parties shall be made in writing and shall be sent by hand delivery, by registered post, by facsimile transmission or by e-mail with a 'read receipt'

- 30.2 If notice is given by way of e-mail, it must be with a 'read receipt', such notice shall be deemed to be received 1 (one) day after sending.
- 30.3 If notice is given by way of facsimile transmission, such notice shall be deemed to be received 1 (one) day after sending.
- 30.4 If notice is given by registered post, such notice shall be deemed to be received 7 (seven) days after sending.
- 30.5 If notice is given by hand delivery, such notice shall be deemed to be received on the day of delivery.
- 30.6 Any legal process shall be served at the parties' chosen domicilium citandi et executandi addresses.
- 30.7 Any changes to the parties' notice addresses and domicilium addresses as furnished in **this Agreement** or Purchase Order shall be given in writing and shall be deemed to apply upon the date of receipt of such notice

31. GENERAL

- 31.1 **This Agreement** constitutes the sole and entire agreement between the parties. **This Agreement** replaces all previous agreements between **the Supplier** and **WESTCOL** relating to the subject matter of **this Agreement**. No prior or parallel agreements relating to the subject matter of **this Agreement** are binding on the parties. All the representations, undertakings, warranties or guarantees ("the representations") made by the parties relating to the subject matter of **this Agreement**, are contained in **this Agreement**. Any representations not contained in **this Agreement** shall not be binding on the parties and shall be without any force or effect.
- 31.2 No amendment or variation of **this Agreement** (including this clause), whether by addition, deletion, waiver, novation or consensual cancellation shall be binding on the parties and shall be without any force or effect unless reduced to writing and signed by the parties to **this Agreement**.
- 31.3 No latitude, extension of time or other indulgence which may be given or allowed by any party to the other party in respect of the performance of any obligation in **this Agreement** or any enforcement of any rights arising from **this Agreement** and no single or partial exercise of any right by any party, shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from **this Agreement** or stop such a party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision of **this Agreement**.
- 31.4 If any term, condition or performance, or any part thereof, in **this Agreement** ("the

provision”) is determined to be invalid, illegal, unlawful or unenforceable to any extent, then that provision shall be removed from the remaining provisions of **this Agreement**, or amended to make it valid, legal, lawful or enforceable (as the case may be), in such a manner as to leave the amended agreement substantially the same in essence, and **this Agreement** so amended shall remain in force and effect.

- 31.5 If any provision of **this Agreement** is determined to be invalid, illegal, unlawful or unenforceable, such a provision shall be deemed to be severable from the rest of the provisions of **this Agreement** and shall not in any way affect the validity and enforceability of the rest of the provisions of **this Agreement** and **this Agreement** as a whole.
- 31.6 **WESTCOL** and **the Supplier** warrant to each other that their respective signatories and representatives have the power, authority and legal right to conclude and sign **this Agreement** and perform in terms of **this Agreement**, and that **this Agreement** has been duly authorised by all necessary actions of their respective governing organs and management, as the case may be, and constitutes valid and binding obligations on them in accordance with the provisions of **this Agreement**.
- 31.7 Each party shall pay their own legal and other consulting and advisory fees and related expenses incurred in regard to the negotiation, drafting, preparation and finalisation of **this Agreement** and the entire transaction.

Signature of person authorized to sign a quotation

Date