

UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

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1 Scope of Agreement

1.1 In terms of this Agreement the Contractor will regularly and systematically inspect, adjust, lubricate, and clean the plant and perform such service and maintenance work as is described in the BOQ. The Contractor shall submit a detailed prescribed service checklist / report on their findings, of which is to be duly signed and accepted by the Client's appropriate representative. This report, duly completed, shall accompany each relevant monthly invoice. The prescribed checklist / report submitted with the relevant Contractor's invoice must be signed off by the responsible Service Technician.

1.2 The Contractor shall comply with the requirements of the Consumer Protection Act 2011 (CPA) in every respect as it applies to both Service Provider and Client alike.

1.3 The Contractor confirms that it has visited the Site before entering into this agreement and that it has familiarised itself with the conditions.

1.4 This Agreement provides for all service work to be carried out during normal working hours. Work done outside of normal working hours will necessitate additional labour charges based on the overtime rates stated herein.

1.5 In the event of a breakdown or emergency call out, the Contractor will be expected to respond to such a call out within the specified response times below:

- P1 Emergency Calls with a 2-hours response time,
- P2 Urgent Calls with a 5-hour response time,
- P3 General Calls with a 12-hour response time.

To facilitate proper communications, the Contractor will be expected to maintain a cellular telephone. In the event of an emergency breakdown, the Contractor is required to respond immediately to such a call-out.

1.6 Should it be found during the scheduled maintenance, that the repairs and/or replacement parts or services are required, the Contractor shall submit a quotation to the Engineer within 24 hours. The Contractor shall furthermore report his findings immediately to the Client, pending receipt of the relevant order number and/or written instruction to proceed with the said repair or replacement.

1.7 All consumable materials (other than cleaning and lubricating materials) such as air filters or media, vee belts, bearings, electrical components, heater elements, compressor lubricating oil, refrigerant gas, water treatment chemicals and paint, etc., required to maintain the equipment in proper working order will be chargeable to the Client's account, subject to the implementation of clause (1.5) above. Water and electrical power required for carrying out the work is to be provided free of charge by the Client.

1.8 With the accredited authorisation of the Client (email, WhatsApp, cell phone message and/or in writing), the Contractor may, at his discretion, carry out minor repairs to enable the proper and immediate operation of the plant or its associated equipment. The value of such running repair shall be determined by the Client.

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1.9 However, the necessary contractual procedures are to be implemented in accordance with clause (1.6) of this document, as soon as possible after completion of the relevant repair and/or replacement.

1.10 Under no circumstances will the Client entertain additional labour and travel costs arising from the unavailability of spare parts and components necessary to effect minor repairs.

1.11 Non – Performance: Non-compliance

Non-performance on the part of the Contractor, refers inter-alia to the following:

- Non-compliance with any procedural requirements as stipulated from time to time by the Engineer and/or the Client.
- Any direct or indirect breach of the Maintenance and Service Agreement / Contract.
- Non-compliance with the BOQ and Service Agreement / Contract.
- Poor workmanship arising from, or because of recurring and on-going failures, tenant complaints and continuous repeat calls (come backs) relating directly to recent repairs and maintenance.
- Non-compliance with the Occupational Health and Safety Act, 1993, National Building Regulations, the Safe Handling of Refrigerants and/or any other Act or regulation directly effecting the Service Agreement / Contract.
- Failure to introduce, complete and continuously update a suitable plant logbook or any other record provided on site for this purpose.

1.12 Non – Performance: Notice

In the case of non-performance by the Service and Maintenance Contractor the client may give the Contractor written notice to remedy the non-performance within a reasonable time of receipt of such notice. Should the Contractor not perform within the allocated time the Cllient may call in another Contractor to affect the necessary work pertaining to the written notice, the cost of which will be for the Contractors account subject to the same rates and parts mark-up mentioned in the contract including the cost of the Engineers involvement in accordance with the terms and conditions laid down by the SA Association of Consulting Engineers.

If the Contractor fails to pay charges within the prescribed period, then the Client shall be entitled to 30 days written notice to cancel the agreement.

1.13 Non – Performance: Penalties

In the event of continuous non-performance by the Contractor, the client reserves the right to implement the following at his/her discretion:

- Termination of Contractors Service Agreement.
- Withhold payment of monies due by the Client (in full or in part).
- Suspend the Contractor from the site until further notice

The table below indicates proposed penalties of each non-performance:

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Deviation	Proposed Penalty	Comments
1st	A penalty of 2% per day of the order value, capped at 30% of the total order value	Issue first warning
2nd	A penalty of 2% per day of the order value, capped at 30% of the total order value	Issue second warning
3rd	A penalty of 2% per day of the order value, capped at 30% of the total order value	Issue third and final warning
4th&Final	Cancellation	Cancellation

1.14 Warranty

The Contractor shall warrant that all maintenance work, repairs, replacement parts, materials, and workmanship provided under this specification are free from defects and comply with the requirements of the contract.

The warranty period shall be **one (1) year** from the date of final acceptance of the completed maintenance work, unless otherwise specified.

During the warranty period, the Contractor shall, at no additional cost to the Client:

- Correct any defects resulting from faulty workmanship or defective materials.
- Replace or repair any components that fail due to defects attributable to the Contractor's work.
- Respond to warranty claims within the time specified in the contract and complete corrective actions within a reasonable period.

The warranty shall not apply to defects or failures resulting from:

- Normal wear and tear.
- Misuse, abuse, or vandalism.
- Accidents or events beyond the Contractor's control.
- Alterations or repairs carried out by others without the Contractor's authorization.
- Failure by the Client to operate or maintain the equipment in accordance with the manufacturer's recommendations.

Any repaired or replaced components shall be warranted for the remainder of the original warranty period or for **three (3) months** from the date of repair or replacement, whichever is longer.

The warranty obligations shall not relieve the Contractor of any liabilities arising from negligence, non-compliance with the specification, or applicable statutory requirements.

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2 Requirements for Tender

2.1 Only Maintenance Contractors who have a well-established service and maintenance organisation, who offer the Planned Service and Maintenance specified, and who can prove that they have honoured similar Contracts, will be considered.

2.2 The lowest or any Tender will not necessarily be accepted. Any submitted Tender that has not complied with the full requirements as stated herein may be considered invalid.

2.3 The Tenderer shall inspect and examine the site and its surroundings and shall satisfy himself before submitting his tender as to the means of access, quantities and nature of work, and, in general, shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his tender

2.4 The contractor shall take all reasonable measures to always safeguard performance of the installation, subject to proper operation of the plant by the Client as defined by the Operating Manual, except for the specified routine annual and breakdown interference.

2.5 The Contractor shall take all reasonable steps to ensure that the work is carried out in an efficient, effective and economic manner and with a minimum of inconvenience to the Tenants in the building. The Client shall provide such facilities and shall accede to such requests as may be considered reasonable to enable the Contractor to achieve the above objectives.

2.6 The Contractor undertakes to carry out the service to the best of his ability and with due diligence.

2.7 The Contractor shall be responsible for any damage to plant and equipment arising directly from negligence on his part, or failure to adhere to this contract

2.8 The Contractor will be expected to supply competent and responsible artisans to carry out the service, maintenance and repair work. Each artisan is expected to be proficient in his respective discipline, i.e. mechanical, electrical, refrigeration, etc., and to be of Journeyman status. Proof of such qualification is to be submitted. Under no circumstances may the service be carried out by unqualified staff/operators, filter cleaners, etc.

2.9 In terms of the OHS Act No.85 of 1993 and Government Gazette No. 38505 dated 27 February 2015, all personnel servicing and maintaining a refrigeration system associated with an air conditioning plant, are required to be registered with the South African Qualification and Certification Committee (SAQCC GAS).

2.10 Furthermore, the registered/authorised person shall issue the necessary Certificate of Conformity on completion of the said installation.

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2.11 All responsible persons and artisans qualified in the refrigeration/air conditioning disciplines shall be registered with SARACCA in the "Safe handling of Refrigerants," in accordance with the requirements of the Montreal Protocol and shall carry on them, the relevant identification card in this regard, to be produced on request. Proof of such registration is to be submitted herewith.

2.12 All repair work carried out by the Contractor shall be guaranteed for a period of twelve (12) months. Should the problem which gave rise to the repair reoccur within the twelve (12) month period, it will be rectified immediately, by the Contractor at no cost whatsoever to the Client. The twelve (12) month guarantee period will then recommence. Bew Parts / Materials carry manufacturers guarantees.

2.13 It is the responsibility of the Contractor to ensure full compliance with the requirements of the Occupational Health and Safety Act of 1993

2.14 On arrival on site for each inspection and maintenance service visit or call-out, the Contractor's representative shall report to the Client's representative and on conclusion of each service, the Contractor shall request the Client's representative to sign an acknowledgement that the service has been undertaken and that the time spent on site is correct.

2.15 Notwithstanding clauses 2.8 and 2.15 herein, whilst undertaking to carry out the work to the best of his ability, the Contractor shall not be responsible for any consequential damage to property, any loss of income, earnings and/or production as a result of the technicians' failure to detect or report on any subsequent repairs and/or replacement parts required to any plant and/or its associated equipment deemed to be faulty.

2.16 The Contractor shall also not be liable for any loss, damage or delay caused by acts of Government, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, act of God, or by any cause beyond his reasonable control, and in any event the Contractor shall not be liable for any consequential damage or losses as a result of such acts.

2.17 The Contractor shall however be liable for any damage to property arising from and as a direct result of negligence on the part of their staff, sub-contractors, agents, or representatives.

2.18 The Client undertakes to provide the Contractor with all reasonable access to the plant.

2.19 The Client shall ensure that no person other than an employee of the Contractor, will be allowed to make any adjustments to any part of the equipment or system covered by this contract.

2.20 The Contractor and all Subcontractors must provide the necessary minimum insurance cover to include the full provisions of the Workmen's Compensation Act and Common Law Liability Insurance with a Compensation limit described by the Client.

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2.21 The Contractor shall provide the required Construction Industry Public Liability Insurance Cover Policy to include cover relating directly to Third Party Property damage, Third Party injury, Underground Services, Water damage, Elemental Perils, Theft, Malicious damage, Testing and/or any other relevant cover pertaining directly to the contracted scope of work to be performed on site / Client's premises. The policy shall clearly state the contract value limitations (Rand Value) as well as the value in Rands of the Excesses applicable.

2.22 Under no circumstances whatsoever, will the Client, its employees and/or Agents be held accountable for any injury, damage or any other form of liability/claim arising from the Contractor's negligence, oversight, incompetence and/or any other reason within their control and contracted scope of work

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3 Service Charges

All repairs, replacements, breakdowns and emergency calls shall be carried out on a time basis as per BOQ rates and material shall be at the following rates:

- Materials and Subcontracted services (Admin fee) to have maximum 15% markup.

The total contract price shall be adjusted on each anniversary date to compensate for increases in cost of labour and materials. This adjustment will be in accordance with the lesser of the two indices viz. SEIFSA and the national inflation rate ruling at the anniversary date and the Manufacturers prices on materials and components.

4 Subcontractors

4.1 This contract shall include all services as specified under the BOQ

4.2 The Contractor may sub-contract to specialist firms the service and maintenance of these systems and equipment but without in any way relieving him of his overall contractual responsibility under this Contract.

4.3 The Client shall ensure that no one other than an employee or representative of the Contractor will be allowed to make any adjustments to any part of the equipment or the system covered by this Agreement without the written consent of the Contractor.

5 Engineer

The Client at his discretion may appoint an engineer to support this contract

5.1 Authority of the engineer

The Engineer shall provide general support and direction of the service and maintenance contract work. Support shall comprise periodic visits which the Engineer may consider necessary to inspect the standard of service and maintenance work for conformity with the contract documents. He is the authorised representative of the Client, only to the extent provided in the contract documents, and his terms of appointment. The Engineer has the power to issue the necessary instructions to ensure proper execution of the service and maintenance work in compliance with the requirements of the service and maintenance contract. All instructions shall be given in writing or through the minutes of the Maintenance Co-ordination Meetings. As the Engineer is the interpreter of the Conditions of Contract and judge of its performance, he shall side neither with the Client or the service and Maintenance Contractor and shall use his appointment under the contract to enforce its faithful performance by both parties

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6 Provisional bills of quantities

7.1 These Bills of Quantities contain pages numbered consecutively in each bill as indicated in the Master Index. Before the tenderer submits his tender he should check the number of pages, and if any are missing or duplicated or the figures or writing indistinct, or the Bills of Quantities contain any obvious errors, he should apply to the enquirer at once and have same rectified, as no liability whatsoever will be admitted by the enquirer in respect of errors in tender due to the foregoing.

7.2 The Bills of Quantities form part of and must be read in conjunction with the specifications and drawings which contain the full description of the work to be done and material and equipment to be used.

7.3 Tenders shall be submitted for initial consideration on the declaration of the total value of the Bills, Bill Summary, Non-Schedules Bill Item Rates and Extra over Rates. Subject to declaration of intent to enter a contract, the bills priced in detail shall be made available within 4 working days after the request to submit the completed bill.

The enquirer may request the submission of completed bills by more than one tenderer after the tender opening where special circumstances warrant this request.

7.4 The total sum in the tender form or other sum, subsequently negotiated between the enquirer and tenderer shall constitute the contract sum of the successful tenderer. Tenderers are advised to check their item extensions and total additions, as no claim for arithmetical errors will be considered.

7.5 No alterations, erasure or addition is to be made in the text of the Bills of Quantities. Should any alteration, erasure or addition be made, it will not be recognised, and the original wording of the Bills of Quantities will be adhered to.

7.6 The priced Bills of Quantities of the successful tenderer will be checked, and the enquirer reserves the right to call for reasonable adjustments to any individual price and to rectify any discrepancy whilst the total tender price, as submitted, remains unaltered. This is to be resolved before award of the contract.

7.7 The responsibility for the accuracy of the quantities written into the bills remains with the party who prepared the bills. The tenderer shall be relieved of responsibility of measuring quantities at the tender stage, and tender sum submitted shall be in respect of the quantities set-out in the bills, although he will be required to make his assessment of items such as fixings, etc. from details stated in the bills and shall include the item prices for such small installation materials as are required for the complete installation in accordance with the specification.

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7.8 The Contractor and the Employer or his Agent may agree that the total of any bill or bills, including any changes by way of additions thereto or deductions therefrom, represents a fair and accurate quantification of the items set out in the bills and the parties may agree final payment on that basis. In the event of any dispute as to the quantities, then the disputed item or items shall be adjusted where necessary.

7.9 The quantities in these Bills of Quantities are not to be used for ordering purposes.

7.10 Changes in the scope and extent of the work included in the Bills shall be allowed to meet the Client's requirements.

7.11 Unless separate rates for the supply and for the installation of any item is specifically called for, the supply and installation costs of any item shall be fully included in the unit price.

The description and pricing of each item shall, unless otherwise stated herein, be held to include making, conveying and delivering, unloading, unpacking, setting, fitting and fixing in position cutting and waste, patterns, templates, plant, return of packings, profit and all other obligations arising out of the conditions of contract, excluding preliminaries.

7.12 The labour and transport rates and the overhead and profit percentage included for Non-Scheduled Bill Items in the tender shall form part of the contract.

7.13 Tenderers shall price the Preliminaries under any of all three groups, viz.

7.13.1 a fixed amount.

7.13.2 an amount varied in proportion to the final contract value as compared to the tender price.

7.13.3 an amount varied in proportion to the final contract period as compared to the originally specified contract period.

The allocation of prices to the three categories listed above must be realistic and the Contractor may be required to justify the allocation of the prices. Attention is particularly drawn to the right reserved in terms of Clause 5.6 above.

7.14 Any work for which a budgetary allowance has been made, shall be priced in terms of the n/s agreement. Any balance remaining shall be deducted from the budgetary allowance in the n/s contract sum.

7.15 The quantities in these Bills of Quantities are measured provisionally. All work executed in accordance with the workshop drawings approved by the Engineer shall be re-measured by the agent who measured the original Bill of Quantities and priced at rates contained in, or based on, the priced Bill of Quantities.

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7.16 Provision is made on the Tender Form for the applicable Value Added Tax to be added.

7.17 Monthly progress claims may be based on the percentage completion of the items under the main headings.

7.18 Where escalation is calculated in terms of the JBCC formula all non-scheduled item prices must be de-escalated to the base date.

7.19 The preamble will be the Model Preambles for Trades as recommended and published by the Association of South African Quantity Surveyors. Tenderers are referred to this document for the full intent and meaning of each clause.

Alternatively, the non-scheduled item could be treated as a proven cost item

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8 Maintenance Tender

The tenderer should, with this tender, include the costing for the full service and maintenance contract as per the BOQ:

Notes:

- The attached bill of quantities must be completed.
- The periodic maintenance and service must be carried out strictly in accordance with the manufacturer's specification, if the manufactures specification deviates from attached the tender should note this and allow for this.
- It is the tenderers responsibility to ensure they allow for all equipment and the system in its entirety, should any of the quantities not be as per the quantities in the equipment specifications it should be noted and allowed for.

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9 Specification

The Contractor shall be responsible for the complete maintenance of all the equipment, components, installations and systems forming part of this Maintenance Contract for the above building

Monthly maintenance responsibilities for each installation including all units and components as specified, shall commence with commencement of the maintenance contract.

This maintenance contract will be for a period of 36-months.

This part of the Contract shall include:

- Routine preventative maintenance.
- Corrective maintenance.
- Breakdown maintenance.

The maintenance work to be performed and executed shall be done strictly in accordance with maintenance schedule, and as specified in in the suppliers / manufacturer's recommendation.

The said maintenance work shall be executed in accordance with the relevant codes of practice, statutory regulations, standards, regulations, municipal laws and by-laws and the manufacturers' specifications and codes of practice.

The maintenance schedules and frequency shall be developed under the maintenance control plan to be instituted by the contractor.

All new equipment, components and materials supplied and installed under the maintenance contract shall be furnished with prescribed manufacturer's guarantees.

The Contractor shall be remunerated as agreed in the service level agreement, based on his performance, for maintaining the complete installation in a satisfactory functional condition

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