
	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		



Service Provider Service Level Agreement (**NB, type of Contract conditions may change at appointment**)

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	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

THIS SERVICE LEVEL AGREEMENT

is made and entered into with effect from (Date) xxxx

BETWEEN:-

Nafasi Water Technologies (Pty) Ltd

Registration number: 1989/006995/07

(the "Client").


And

XXXXXXXXXX

Registration number: XXXXXXXXX

(the "Service Provider").

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	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

1 Table of Contents

1. SCOPE OF AGREEMENT 4

2. GENERAL AND DEFINITIONS 4

3. COMMENCEMENT AND DURATION 8

4. THE SCOPE OF SERVICES 8

5. OBLIGATIONS OF THE SERVICE PROVIDER 8

6. PAYMENT TERMS 9

7. CONFIDENTIALITY 10

8. PERFORMANCE 11

9. BREACH AND TERMINATION 12

10. CESSION 13

11. DISPUTE RESOLUTION 13

12. WARRANTIES 14

13. LOSS AND/OR DAMAGE 14


14. INDEMNITY 15

15. EXCLUSION OF LIABILITY 15

16. CONFLICT OF TERMS AND CONDITIONS 15

17. FORCE MAJEURE 15

18. NOTICES AND DOMICILIA 17


	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

1. SCOPE OF AGREEMENT


- 1.1. It is a requirement that Nafasi Water request supply, delivery and installation for palisade fencing, razor wire and three gates at the Trans- Caledon Tunnel Authority (TCTA) plant based in Germiston which shall be subject to a once-off services term agreement expiring (date) on the basis of Annexure B herein. This Service Level Agreement (SLA) sets out the procedures for the services of supply, delivery and installation for palisade fencing, razor wire and three gates.
- 1.2. This SLA defines the terms and conditions under which Goods and Services are to be ordered by the Client, as well as the obligations of the Service Provider during and after the Duration of this SLA.
- 1.3. The Service Provider has demonstrated to the Client that it has abilities to provide the required services, in accordance with specification.
- 1.4. The Client appoints the Service Provider for the services of supply, delivery and installation for palisade fencing, razor wire and three gates at TCTA Central Basin AMD Plant for a once off period.

2. GENERAL AND DEFINITIONS


- 2.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
 - 2.1.1. "SLA" means this agreement concluded between the Client and the Service Provider in respect of the transaction, which agreement comprises the Purchase Order and the requirements thereof.
 - 2.1.2. "Delivery instructions" means the delivery instructions set out on the issued Purchase Order.
 - 2.1.3. "Delivered Price" means the agreed delivery price for services rendered for of supply, delivery and installation for palisade fencing, razor wire and three gates inclusive of the service cost and transport cost.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- 2.1.4. "Services" means the work required by the Client from the Service Provider as specified on the Purchase Order.
- 2.1.5. "Purchase Order" means the purchase order to which these terms are attached.
- 2.1.6. "parties" means the Service Provider and the Client.
- 2.1.7. "Nafasi Water" means the party denoted as such on the face of the Purchase Order, herein identified as the Client.
- 2.1.8. "specification" means the quality specifications in respect of services or goods as contained in the Purchase Order.
- 2.1.9. "Service Provider" means the party denoted as such on the face of the Purchase Order.
- 2.1.10. "the terms" means the standard terms and conditions contained in this SLA.
- 2.1.11. "the transaction" means the purchase of the goods by the Client from the Service Provider to which this SLA applies.
- 2.1.12. A reference to "damages" shall be deemed to include all damages whether direct, indirect or consequential, including without being limited to loss or profit.
- 2.1.13. "VAT" means value added tax payable in terms of the Value-Added Tax Act, 1991.
- 2.1.14. Any reference in this Agreement to-
- 2.1.14.1. "business hours" shall be construed as being the hours between 07h00 and 16h30 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.1.14.2. "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
- 2.1.14.3. "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- 2.1.14.4. "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 2.1.14.5. "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2000.
- 2.1.14.6. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.1.14.7. The words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same meaning.
- 2.1.14.8. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this SLA.
- 2.1.14.9. Unless otherwise provided, defined terms appearing in this SLA in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.1.14.10. A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date of this SLA and as amended or substituted from time to time.
- 2.1.14.11. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.1.14.12. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.1.14.13. The rule of construction that this SLA shall be interpreted against the Party responsible for the drafting of this SLA, shall not apply.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

2.1.14.14. No provision of this SLA shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a party to this SLA.

2.1.14.15. Any reference in this SLA to "this Agreement" or any other agreement or document shall be construed as a reference to this SLA or, as the case may be, such other agreement or document, as amended, varied novated or supplemented from time to time;

2.1.14.16. This SLA constitutes the sole record of the entire agreement between the parties regarding the transaction and supercedes any existing agreement, whether oral or in writing between them regarding any transaction which may be in force as at the date of the Purchase Order.

2.1.14.17. No relaxation or indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor.


2.1.14.18. No alterations or additions to this SLA shall be of any force or effect unless made in writing and signed by or on behalf of the parties by persons duly authorised.

2.1.14.19. Neither party shall be bound by any undertakings, representations, warranties, promises, or the like not recorded herein.

2.1.14.20. Any rights which are stated to accrue to the Client in terms of this SLA shall be without prejudice to any other rights which the Client may have in law and any entitlement of the Client in its absolute discretion.

2.1.14.21. In this SLA the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this SLA.

2.1.14.22. This SLA shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

3. COMMENCEMENT AND DURATION


- 3.1. The duration of this SLA shall be for a once- off period commencing on (date) and terminating on (date), subject to performance of the Service Provider.
- 3.2. Notwithstanding the signature date, this SLA shall commence on (date)
- 3.3. Unless this agreement is extended in writing by the Client, it shall terminate on(date).
- 3.4. The Client shall at its sole discretion have the power to suspend and/or terminate this SLA, for any reason whatsoever, by giving one month's notice to the Service Provider.

4. THE SCOPE OF SERVICES

- 4.1. The Service Provider should demonstrate an ability to provide the necessary services of supply, delivery and installation for palisade fencing, razor wire and three gates fencing at TCTA Central Basin AMD Plant.
- 4.2. The Service Provider undertakes to provide such services for the supply, delivery and installation for palisade fencing, razor wire and three gates and in accordance with the specification included under Annexure A with the agreed delivery timelines.

5. OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1. The Service Provider shall render sound, professional and satisfactory supply services as set out in this SLA.
- 5.2. It shall be the sole responsibility of the Service Provider to ensure that any information or document submitted in terms of this SLA is true and correct. The Service Provider waives its lien over the supply of goods and services emanating from such services in favour of the Client.
- 5.3. Notwithstanding anything contained in this SLA, the Client reserves the right to verify and confirm any information or document submitted by the Service


	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

Provider in the performance and execution of its duties and obligations in terms of this SLA.

- 5.4. The Service Provider undertakes to act in good faith and afford all reasonable and necessary co-operations in fulfilling its obligations in terms of this SLA.
- 5.5. The Service Provider undertakes that suitably qualified personnel will be used in rendering their services to Client.
- 5.6. It is recorded that the Client and the Service Provider agree on rates to be charged by the Service Provider.
- 5.7. The rates include all costs relating to the provision of resources for the services.
- 5.8. The Client may be required to schedule requested meetings by the Service Provider relating to the services provided.

6. PAYMENT TERMS

- 6.1. For the duration of this SLA, the Client shall pay the Service Provider for the delivered tonnages, applied to the Delivered price, on a monthly basis.
- 6.2. The Service Provider will bill the Client monthly by submitting an invoice and a recon of all the deliveries made as well as all other requested supporting documentation.
- 6.3. The Client shall pay the Service Provider within sixty (60) business days of the receipt of a valid tax invoice from the Service Provider, failing which the Service Provider may, upon giving notice to the Client to correct within seven (7) calendar days, apply interest equal to the published prime overdraft rate, charged by the South African Banking Institutions.
- 6.4. If at any stage the Client makes a payment to the Service Provider in an amount in excess of the amount to which Service Provider is entitled to, the Client shall be entitled to claim a refund by setting-off the amount in the Service Provider's invoices for any such overpayment.
- 6.5. In the event that the Service Provider and / or any its members fail to make such payment by a date stipulated in the letter of demand from the Service Provider, the amount owing shall accrue interest at the rate equal to the published prime overdraft rate, charged by the South African Banking Institutions.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

6.6. Services of the supply, delivery and installation for palisade fencing, razor wire and three gates shall be fixed and firm and not be adjusted for any increase to the actual cost of services.

6.7. Purchase Orders shall be placed on a yearly basis and no adjustments to the Delivered price on the issued Purchase Order shall be allowed.

7. CONFIDENTIALITY


7.1. The parties, their employees, representatives and/or agents undertake that they will treat as confidential the terms of this SLA together with all information whether of a technical nature or otherwise relating in any manner to the business or affairs of the other parties as may be communicated to it hereunder or otherwise in connection with this SLA and will not disclose such information to any person, firm or company (other than to its auditors and other professional advisers) or to the media, and will not use such information other than for the purposes of this SLA, subject always to any prior specific authorisation in writing by the Parties concerned to such disclosure or use.

7.2. The parties further undertake to treat as confidential all information which a third party has in terms of any agreement made available and which has become known to both parties in the course of their duties and not to divulge to any third party any information thereto.

7.3. The parties shall include their obligations in terms of this SLA in respect of security and protection of information in any and all contracts with any sub-contractors, which may become involved in the execution of this SLA. The contents of any reports, findings and systems and any such relevant information ("the contents") remains the property of the Client. The contents shall not be disseminated without prior written consent of the Client. The parties agree that after taking all relevant circumstances into account, the confidentiality clause is necessary for the protection of the interests of parties, their subjects and the objectives of the Client.

7.4. The provisions of this clause shall not apply to any information which:


7.4.1. is in the public domain other than by default of the recipient party;

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- 7.4.2. is obtained by the recipient party from a bona fide third party having the right to disseminate such information
- 7.4.3. is or has already been independently generated by the recipient party;
- 7.4.4. is required to be disclosed by law or the valid order of a court of competent jurisdiction or governmental or other regulatory authority or agency, in which event the disclosing party shall so notify the other promptly as practicable (and if possible, prior to making any disclosure) and shall use its reasonable endeavours to seek confidential treatment of such information.
- 7.4.5. The obligations contained in this clause shall endure beyond the termination of this SLA without limit in time except and until any confidential information enters the public domain otherwise than through default of the recipient party

8. PERFORMANCE


- 8.1. The parties shall do all acts and sign all such documents as may be required from time to time in order to implement and carry out the objectives of this SLA.
- 8.2. The Client shall be entitled to review the performance of the Service Provider on a periodic basis. Poor performance shall be construed as a material breach of this SLA.
- 8.3. The Service Provider shall:
 - 8.3.1. at its cost provide services to the Client in terms of the delivery instructions; and
 - 8.3.2. deliver to the Client a waybill together with proof of services rendered which shall include the order number, gross and net weights and the number of units supplied.
 - 8.3.3. not be entitled to effect part delivery of the goods or services unless the Client's prior written consent is obtained. Part deliveries will not entitle the Service Provider to part payment of the purchase.
- 8.4. The Service Provider acknowledges that time is of the essence in relation to the transaction and the Service Provider's failure to provide services timeously in accordance with delivery instructions shall entitle the Client to:

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- 8.4.1. source the services from third parties other than the Service Provider and to recover from the Service Provider any adverse difference between the cost of doing so and the Delivery price; or
- 8.4.2. recover damages the onus being on the Service Provider to prove that the Client did not suffer damages as a result of its failure to deliver in terms of the delivery instructions.
- 8.5. Ownership of and risk in the goods shall pass to the Client upon delivery.
- 8.6. The Service Provider shall pack all goods in such a manner to prevent damage in transit.
- 8.7. Should any services rendered in terms of this SLA fail to comply with the specifications, or be unsuitable, the Client shall be entitled to:
 - 8.7.1. require that the Service Provider, at its own cost, cause such unsatisfactory services or goods delivered be rectified promptly and without delay; or
 - 8.7.2. cancel the SLA and claim such damages as it may have sustained in which case the Service Provider shall at its own cost be required to remove the goods.
 - 8.7.3. In the event of a dispute arising in respect of whether the services or goods comply with the specification, the Service Provider shall, within 7 (seven) days of the rejection of the goods or services by the Client send for tests and/or analyses to be undertaken by a recognised public authority nominated by the Client, who shall act as an expert and not an arbitrator and whose decision shall be final and binding on the Service Provider. The cost of the tests and/or analyses shall be borne by the Service Provider provided that if it is proved that such goods do comply with the specification, the Client shall refund the Service Provider all proven costs.

9. BREACH AND TERMINATION

- 9.1. In the event of any of the parties committing a breach of any of the terms and conditions of this SLA (“the defaulting party”) and failing to remedy that breach

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

within 7 (seven) business days, the other party (“the complying party”) shall send a written notice (“notice”).


- 9.2. The notice referred to in Clause 9.1 above shall call upon the defaulting party to remedy the said breach within 7 (seven) business days from date of receipt of the notice.
- 9.3. If the defaulting party fails to comply with 9.2, the complying party shall be entitled to, in its sole discretion, without prejudice to any other rights it may have in terms of this SLA or in law, either to terminate this SLA by written notice to that effect given to the defaulting party. Alternatively, the complying party may enforce this SLA and, in both cases, claim damages.
- 9.4. Any termination of this SLA shall not absolve the parties from the obligation to observe the confidentiality obligations and other restraints as set out in this SLA.

10. CESSION

- 10.1. Neither party shall be entitled to cede or assign any of its rights and obligations under and in terms of this SLA without consent, which shall not be unreasonably withheld, from the other party.

11. DISPUTE RESOLUTION

- 11.1. Any dispute, difference, deadlock or emphases of whatever nature (“dispute”) between the parties arising out of or pursuant to the SLA, its interpretation, the parties’ respective rights and/or obligations thereunder, its termination or any matter arising out of its termination, that dispute shall be amicably settled by the parties’ senior management, failing which must decided by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa, by an arbitrator appointed by that Foundation.
- 11.2. The arbitration shall be held in Gauteng in accordance with the formalities and procedure settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual rules of evidence.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		


- 11.3. The arbitration shall be held as quickly as possible after it is demanded, with a view to being completed within 30 (thirty) days after it has been so demanded.
- 11.4. This clause 11 is severable from the rest of the SLA and shall therefore remain in effect even this SLA is terminated.
- 11.5. The provisions of this clause shall not prohibit the parties from making application to court for urgent and/or interim relief.

12. WARRANTIES

- 12.1. The Service Providers warrants that:
 - 12.1.1. The goods or services are and shall be suitable for the purpose for which they are required.
 - 12.1.2. The goods are and shall be free from any defects (whether latent or patent) whether in material, design, workmanship or otherwise and are and shall be of good and merchantable quality.
 - 12.1.3. No person has or shall have any right (including any option, preferential rights or right of first refusal of any nature whatever to acquire any of the goods.
 - 12.1.4. The goods or services are not and shall not be subject to;
 - (a) Any lien, pledge, hypothec, mortgage, notarial or other bond, cession or any other encumbrance of whatsoever nature in favour of any third person; or
 - (b) Any credit agreement, lease or other agreement conferring any right to possession on anyone else nor will the Service Provider be obliged to grant any such to any third person.

13. LOSS AND/OR DAMAGE

- 13.1. All goods supplied in terms of the Purchase Order shall be and remain at the sole risk of the Service Provider who shall bear all costs whatsoever arising from, or in respect of all losses, damages and/or destruction of the goods until such time as the goods have been delivered to the Client.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

14. INDEMNITY

14.1. The Service Provider hereby indemnifies and holds the Client harmless against all and any costs, liability, loss, damages or expense that it may sustain by virtue of;

14.1.1. Service Provider breaching this SLA; and

14.1.2. any claims which may be made against it for the unauthorised use or infringement of patent rights, trademarks and/or any other protected proprietary rights in respect of the goods.

15. EXCLUSION OF LIABILITY

15.1. The Service Provider acknowledges and agrees that the Client shall not be liable for any injury sustained and/or damages suffered by any employee, contractor and/or any other person employed by the Service Provider in any manner whatsoever, at the premises of the Client and hereby indemnifies the Client accordingly.


16. CONFLICT OF TERMS AND CONDITIONS

16.1. The Purchase Order may contain special terms for each transaction, to the extent that any of the special terms conflict with any of the SLA terms, the SLA terms shall prevail.

16.2. If any one or more of the terms or the special terms of the Purchase Order are not enforceable for any reason whatsoever, the remainder of the terms and of the special terms shall continue to be of full force and effect.

17. FORCE MAJEURE


17.1. In the event that performance of this SLA in the reasonable opinion of either party is made impossible by reason of an any occurrence beyond the reasonable control of a party and which could not have been prevented by a reasonable and prudent person, including but not limited to

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- i war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage; and/or
- ii natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- iii and/or explosions, fires, destruction of any equipment; and/or
- iv boycotts, strikes and lockouts of all kinds, go-slows, occupation of premises, power outages, and work stoppages which occur in the enterprise of either party; and/or
- v acts of authority, whether lawful or unlawful; and/or
- vi epidemic or pandemic. (each an "Uncontrollable Circumstance"),

and if an Uncontrollable Circumstance is grounds for either party not performing its obligations under this SLA, then the party relying on such act, event or condition shall:

- (a) provide prompt notice to the other party of the occurrence of the act, event or condition as soon as reasonably practicable after the party first knew of such occurrence and give an estimation of its expected duration and the probable impact on the performance of its obligations hereunder;
- (b) exercise all reasonable efforts to continue to perform its obligations hereunder;
- (c) in accordance with this SLA, as expeditiously as reasonably practicable, take action to correct or cure the act, event or condition preventing its performance;
- (d) exercise all reasonable efforts to mitigate or limit damages to the other party; and
- (e) provide prompt notice to the other party of the cessation of the act, event or condition giving rise to its inability to perform.

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

17.2. In the event that performance of the SLA in the reasonable opinion of either party continues to be made impossible by reason of an Uncontrollable Circumstance, then either party shall notify the other in writing and the Client shall:

- (a) terminate the SLA forthwith and make all payment for services performed through the date of termination and all reasonable costs incurred by the Service Provider.

18. NOTICES AND DOMICILIA

18.1. The parties to this agreement choose their respective domicilium citandi et executandi as follows-

5.1.1. **THE CLIENT:**

Nafasi Water Technologies (Pty) Ltd

Chief Operating Officer: Beauty Mazibuko

80 Greenvale Road, Germiston. 1410.

Telephone number: (010) 055-1950

Email:bmazibuko@nafasiwater.com


14.1.2 **THE SERVICE PROVIDER:**

Director: xxxxxxxxxxxx

xxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxx

Email: xxxxxxxxxxxxxxxx


	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

- 5.2. Any party shall be entitled to change its *domicilium* by giving written notice to the other party, provided such change shall not take effect until the receipt of such notice by the other party.
- 5.3. All notices to be given by the parties to each other shall be given to the aforesaid addresses by delivery thereto, or by posting by registered mail, or by telex or telefax.
- 5.4. Any notice given in terms of this SLA shall be in writing and shall:
- 5.4.1. if delivered by hand be deemed to have been duly received by the addressee on date of delivery;
 - 5.4.2. if posted by prepaid registered post is deemed to have been received by the address on the eighth day following the date on such posting;
 - 5.4.3. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.
 - 5.4.4. Notwithstanding anything to the contrary contained or implied in this SLA, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK. SIGNATURES ON NEXT PAGE.]

Initial.....

Sign.....

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

SIGNED at _____ on _____ 2022.

For and on behalf of **The Service Provider**

Signature:

Name of Signatory:

(who warrants that he/she is duly authorised hereto)

Designation of Signatory:

AS WITNESS


Signature:

Name of Signatory:

Designation of Signatory:

Initial.....

Sign.....

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

SIGNED at _____ on _____ 2022.

For and on behalf of **the Client**

Signature:

Name of Signatory:

(who warrants that he/she is duly authorised hereto)


Designation of Signatory:

AS WITNESS

Signature:

Name of Signatory:

Designation of Signatory:

	Service Provider Framework Agreement/ SLA	Document Name	TCTA CB Eskom substation palisade fencing SLA	Rev	00
		Document Reference	WO2027-0000-RFP-SLA-0001-01	Rev	00
		Date	05 December 2022		

DRAFT