TENDER No. RFP 139/2020

APPOINTMENT OF A TURNKEY CONTRACTOR FOR PLANNING, DESIGN, CONSTRUCTION AND CONSTRUCTION MONITORING FOR THE REVITILIZATION OF THE ISITHEBE INDUSTRIAL PARK PHASE 2 IN THE KWAZULU NATAL PROVINCE FOR THE DEPARTMENT OF TRADE AND INDUSTRY
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**Notes:**

The Tender Document must be submitted as a whole. All forms must be properly completed as required and the document shall not be taken apart or altered in any way whatsoever.

All forms must be duly completed in *black ink* as required.

The list of returnable documents, which consists of forms and schedules to be completed and company specific certificates and information pages to be attached, comprise the following:

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</table>
THE CONTRACT

C1 : AGREEMENT AND CONTRACT DATA
C2 : PRICING DATA
C3 : SCOPE OF WORK
C4 : SITE INFORMATION
## PART 1: AGREEMENT AND CONTRACT DATA

**NEC3 Engineering and Construction Contract (ECC) April 2013 revision Option F - Management Contract**

<table>
<thead>
<tr>
<th>Document reference</th>
<th>Title</th>
<th>No of pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1.1</td>
<td>Form of Offer and Acceptance</td>
<td>5</td>
</tr>
<tr>
<td>C1.2</td>
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<td>9</td>
</tr>
<tr>
<td>C1.2.1</td>
<td>Conditions of Contract</td>
<td>10</td>
</tr>
<tr>
<td>C1.2.2</td>
<td>Contract Specific Data</td>
<td>5</td>
</tr>
<tr>
<td>C1.3</td>
<td>Performance Guarantee</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>Total number of pages</strong></td>
<td><strong>33</strong></td>
</tr>
</tbody>
</table>
C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: TENDER No RFP 139/2020: APPOINTMENT OF A TURNKEY CONTRACTOR FOR PLANNING, DESIGN, CONSTRUCTION AND CONSTRUCTION MONITORING FOR THE REVITALIZATION OF THE ISITHEBE INDUSTRIAL PARK PHASE 2 IN THE KWAZULU NATAL PROVINCE FOR THE DEPARTMENT OF TRADE AND INDUSTRY

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the service provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

THE OFFERED TOTAL OF THE PRICES (FIRST FORECAST), INCLUSIVE OF VALUE ADDED TAX IS

Rand ...........................................................................................................................................................................(in words);
R ............................................................................................................................................................................. (in figures).

Part B: Sub-contracted fee percentage ..........................................................................................................................% (In figure)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the service provider in the conditions of contract identified in the contract data.

Signature ........................................................................................................................................................................
Name ................................................................................................................................................................................
Capacity ...............................................................................................................................................................................

For the tenderer

Name of Tenderer ............................................................................................................................................................
Address of Tenderer) ..........................................................................................................................................................
Name of witness, ...............................................................................................................................................................
Signature of witness .................................................. Date ..................................
C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 Acceptance

By signing this part of this form of offer and acceptance, the Employer identified below accepts the tenderer’s offer. In consideration thereof, the Employer shall pay the service provider the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer’s offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1: Agreements and contract data, (which includes this agreement)
- Part C2: Pricing data
- Part C3: Scope of work.
- Part C4: Site information

and the schedules, forms, drawing and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The Tenderer shall deliver the security in terms of Option X13 of the NEC3 ECC Option F contract within the period stated in the contract Data or within the period stipulated in the conditional Letter of Acceptance, whichever date is the earliest, and he shall, immediately after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer’s agent (whose details are given in the Contract Data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data, within 14 days of the date on which this Agreement comes into effect, if not supplied earlier in accordance with the conditional Letter of Acceptance. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement, unless stated differently in the contract conditions, comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt notified the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract within parties.

Signature .................................................................

Name .................................................................

Capacity .................................................................

for the Employer Development Bank of Southern Africa Limited
1258 Lever Road, Headway Hill, Midrand, Gauteng Province

Name of witness .................................................................

Signature of witness ................................................................. Date ..............................

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Schedule of Deviations

The extent of deviations from the Tender documents issued by the Employer prior to the Tender closing date is limited to those permitted in terms of the Tender Data and the Conditions of Tender. A Tenderer’s covering letter will not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of offer and acceptance; the outcome of such agreement shall be recorded here. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Tender documents and which it is agreed by the Parties becomes and obligation of the contract shall also be recorded here. Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated in to the final draft of the Contract.

1 Subject .......................................................................................................................... Details .................................................................................................................................

2 Subject ..........................................................................................................................

3 Subject ..........................................................................................................................

4 Subject ..........................................................................................................................

5 Subject ..........................................................................................................................

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the Tender documents and the receipt by the Tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.
For the Tenderer:

Signature(s)  
Name(s)  
Capacity  

Name of Tenderer  
Address of Tenderer  

Name of witness  
Signature of witness  
Date

For the Employer:

Signature(s)  
Name(s)  
Capacity  

Name of Employer:  Development Bank of Southern Africa Limited  
Address of Employer  1258 Lever Road, Headway Hill, Midrand, Gauteng Province  

Name of witness  
Signature of witness  
Date
## C1.2 CONTRACT DATA

<table>
<thead>
<tr>
<th>Document reference</th>
<th>Title</th>
<th>No of pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1.2</td>
<td>Contract Data</td>
<td>1</td>
</tr>
<tr>
<td>C1.2.1</td>
<td>Conditions of Contract</td>
<td>16</td>
</tr>
<tr>
<td>C1.2.2</td>
<td>Contract Specific Data</td>
<td>3</td>
</tr>
<tr>
<td>C1.3</td>
<td>Performance Guarantee</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Total number of pages</td>
<td>24</td>
</tr>
</tbody>
</table>
C1.2.1 CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract are the NEC3 Engineering and Construction Contract (ECC) April 2013 revision Option F – Management Contract with Secondary Option Clauses and Z-clauses as selected and detailed below.

Copies of these conditions of contract may be obtained from the South African Association of Consulting Engineers (011 463 2022) or Engineering Contract Strategies (Tel 011 803 3008, fax 011 803 3009). The Employer will not provide copies.

The NEC3 ECC makes several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the NEC3 ECC.

Each item of data given below is cross-referenced to the clause in the NEC3 ECC to which it mainly applies.

The Contract Specific Data, General and Special Conditions (Z-clauses) of Contract shall have precedence over the Drawings, Scope of Work and Standardised Specifications in the interpretation of any ambiguity or inconsistency.

SPECIAL CONDITIONS OF CONTRACT – Z-CLAUSES

1. GENERAL

The Special Conditions of Contract (Z-clauses) form an integral part of the Contract. The Z-clauses shall amplify, modify or supersede, as the case may be, the NEC3 ECC Core and Secondary Option Clauses to the extent specified below, and shall take precedence and shall govern.

The clauses of the Z-Clauses hereafter are numbered “Z” followed in each case by a number and an appropriate heading.

The Data Forms included in the NEC3 ECC are replaced with the Data Forms included in this Contract Project Document.
## C1.2 ECC3 CONTRACT DATA

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.

2. Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row. Where the following symbol is used “[●]” - data is required to be inserted relevant to the specific option selected.]

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Statement</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The <em>conditions of contract</em> are the core clauses and the clauses for main Option</td>
<td></td>
</tr>
<tr>
<td></td>
<td>dispute resolution Option and secondary Options</td>
<td></td>
</tr>
<tr>
<td></td>
<td>F: Management Contract</td>
<td></td>
</tr>
<tr>
<td></td>
<td>W1: Dispute resolution procedure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X2: Changes in the law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X5: Sectional Completion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X7: Delay damages</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X13: Performance Bond</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X15 Limitation of the Contractor’s liability for his design to reasonable skill and Care.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>X18 Limitation of liability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Z: Additional <em>conditions of contract</em> of the NEC3 Engineering and Construction Contract, April 2013 revision (ECC)</td>
<td></td>
</tr>
</tbody>
</table>


**Address** 1258 Lever Road Headway Hill, Midrand Johannesburg
Represented by: Chuene Ramphele

Tel No.
Fax No.

<table>
<thead>
<tr>
<th>10.1</th>
<th>The Project Manager is: (Name)</th>
<th>Lerato L Lenong</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Address</td>
<td>1258 Lever Road Headway Hill, Midrand Johannesburg</td>
</tr>
<tr>
<td></td>
<td>Tel</td>
<td>011 3131 3500</td>
</tr>
<tr>
<td></td>
<td>Fax</td>
<td>TBA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10.1</th>
<th>The Supervisor is: (Name)</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Address</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Tel No.</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Fax No.</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>e-mail</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11.2(13)</th>
<th>The works are</th>
<th>Turnkey Contract- Revitalization of Isithebe IP Phase 02 See C3.1 paragraph 1.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.2(14)</td>
<td>The following matters will be included in the Risk Register</td>
<td>(i) Work performance and quality of targeted enterprises subcontracted by the Contractor; (ii) Community liaison; (iii) General Election unrest 2019;</td>
</tr>
<tr>
<td>11.2(15)</td>
<td>The boundaries of the site are</td>
<td>See map in Part 4: Site Information</td>
</tr>
<tr>
<td>11.2(16)</td>
<td>The Site Information is in</td>
<td>Part 4: Site Information</td>
</tr>
<tr>
<td>11.2(19)</td>
<td>The Works Information is in</td>
<td>Part 3: Scope of Work and all documents and drawings to which it makes reference.</td>
</tr>
</tbody>
</table>

12.2 The law of the contract is the law of the Republic of South Africa

13.1 The language of this contract is English

13.3 The period for reply is 21 Days

2 The Contractor's main responsibilities Data required by this section of the core clauses is provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.
## Time

<table>
<thead>
<tr>
<th>11.2(3)</th>
<th>The completion date for the whole of the works is 10 months from the starting date</th>
</tr>
</thead>
</table>

| 30.1   | The access dates are: Scope of Work in C3 Within [Five (5)] days of the starting date subject to the Project Manager’s approval of a suitable and sufficiently documented health and safety plan including “Notification of Construction work required in terms of the Construction Regulation 2014 has been submitted to the Department of Labour. |

<table>
<thead>
<tr>
<th>31.1</th>
<th>The Contractor is to submit a first programme for acceptance with the signed letter of appointment.</th>
</tr>
</thead>
</table>

| 31.2   | The starting date is within [seven (7) days from the date the Notification of Construction work required in terms of the Construction Regulation 2014 has been submitted to the Department of Labour. |

| 32.2   | The Contractor submits revised programmes at intervals no longer than 4 weeks |

| 35.1   | The Employer is not willing to take over the works before the Completion. Confirmed |

## Testing and Defects

<table>
<thead>
<tr>
<th>42.2</th>
<th>The defects date is 30 weeks after Completion</th>
</tr>
</thead>
</table>

| 43.2   | The defect correction period is 3 weeks except that the defect correction period for N/A and the defect correction period for N/A |
## 5 Payment

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>50.1</td>
<td>The <strong>assessment interval</strong> is 15th day of each successive month</td>
</tr>
<tr>
<td>51.1</td>
<td>The <strong>currency of this contract</strong> is the South African Rand</td>
</tr>
<tr>
<td>51.2</td>
<td>The period within which payments are made is 4 weeks from receipt of tax invoice</td>
</tr>
<tr>
<td>51.4</td>
<td>The <strong>interest rate</strong> is (i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands.</td>
</tr>
</tbody>
</table>

## 6 Compensation events

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.1(13)</td>
<td>The place where weather is to be recorded is: At the site working area</td>
</tr>
<tr>
<td></td>
<td>The <strong>weather measurements</strong> to be recorded for each calendar month are:</td>
</tr>
<tr>
<td></td>
<td>The cumulative rainfall (mm)</td>
</tr>
<tr>
<td></td>
<td>The number of days with rainfall of more than 10 mm.</td>
</tr>
<tr>
<td></td>
<td>The place where weather is to be recorded on the Site is within the site boundaries.</td>
</tr>
<tr>
<td></td>
<td>The weather data are the records of past weather measurements for each calendar month which were recorded at a site nearest to that of the facility at Isithebe Industrial Park in KwaZulu Natal, South Africa and which are available from the South African Weather Service.</td>
</tr>
<tr>
<td></td>
<td>The Contractor is to allow in his programme for 10 days per 12 months contract period for interruption to the works due to rain.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause</th>
<th>Assumed values for the ten year return weather data for each weather measurement for each calendar month are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.1(13)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause</th>
<th>An event which stops the Contractor completing the works by the date shown on the Accepted Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.1(19)</td>
<td>The <strong>Contract to allow for three (3) days interruption in his programme</strong></td>
</tr>
</tbody>
</table>
7 Title
Employer assumes title on all equipment marked by the Supervisor for use by Management Contractor's subcontractors

8 Risks and insurance

<table>
<thead>
<tr>
<th>80.1</th>
<th>Additional Employer’s risks</th>
<th>None</th>
</tr>
</thead>
</table>
| 84.1 | The Contractor provides the insurances stated in the Insurance Table in 84.2, including the following additional insurances | (i) A Coupon Policy for Special Risks Insurance issued by the South African Special Risks Insurance Association
(ii) Professional Indemnity insurance for R5m with regard to design and other professional services rendered by the Contractor or its subcontractors per event with no limit on number of events |
| 84.1 | The Employer provides these additional insurances | None |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is | R10 million with cross liability and no limit on number of events or claims |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is | As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Contractor's common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands). |

9 Termination
The employer reserves the right to terminate the contract should the management contractor fails to deliver or comply to the terms of this contract

10 Data for Main Option clause

<table>
<thead>
<tr>
<th>F</th>
<th>Management Contract</th>
<th>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.4</td>
<td>The Contractor prepares forecasts of Defined Cost for the works at intervals no longer than</td>
<td>4 weeks</td>
</tr>
<tr>
<td>50.6</td>
<td>The exchange rates are those published in</td>
<td>N/A</td>
</tr>
</tbody>
</table>
11 Data for Option W1

W1.1 The Adjudicator is (Name) The Party, which raises the dispute, shall select three adjudicators from the panel of adjudicators published by the South African Institution of Civil Engineering and/or the Association of Arbitrators Southern Africa or a combination from both panels depending upon the technical or legal issues and dispute, determine their hourly fees and availability to adjudicate the dispute in question. The other Party shall then select within seven (7) days, one of the three nominated adjudicators to adjudicate the dispute.

W1.2(3) The Adjudicator nominating body is: If the Parties fail to agree an adjudicator the Association of Arbitrators Southern Africa shall be approached to nominate and appoint an adjudicator.

W1.4(2) The tribunal is: Arbitration.

W1.4(5) The arbitration procedure is The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators Southern Africa or its successor body.

The place where arbitration is to be held is Johannesburg, South Africa

The person or organisation who will choose an arbitrator
- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is The Association of Arbitrators Southern Africa or its successor body.

12 Data for secondary Option clauses

X2 Changes in the law Notwithstanding anything contained in this clause or this agreement, a “change in law” does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged.

X5 Sectional Completion

X5.1 The completion date for each section of the works is:

Refer to annexure C3
<table>
<thead>
<tr>
<th>Sectional Completion and Delay damages (used together)</th>
<th>Delay damages for each Section of the works are [R$] per day up to a limit of [10%] of the contract Price for the Section calculated in accordance with the guidelines from the national Department of Public Works. As a guide it will probably be calculated based on R1.25 per R100</th>
</tr>
</thead>
<tbody>
<tr>
<td>X13 Performance Bond</td>
<td>Being a variable Guarantee issued by a registered entity approved by the Employer – fixed at ten percent (10%) of the contract Price at Contract Date, reducing to five percent (5%) of the contract Price when the Contractor achieves Completion and expires 1 month after the defects date,</td>
</tr>
<tr>
<td>X17 Low performance damages</td>
<td>n/a</td>
</tr>
<tr>
<td>X18 Limitation of liability</td>
<td></td>
</tr>
<tr>
<td>X18.1 The Parties’ liability to the other for indirect or consequential loss is limited to</td>
<td>R0.0 (zero Rand)</td>
</tr>
<tr>
<td>X18.2 For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to</td>
<td>The amount of the insurance as stated in the data for clause 84.2 above, R10m per event.</td>
</tr>
<tr>
<td>X18.3 The Contractor’s liability for Defects due to his design which are not listed on the Defects Certificate is limited to</td>
<td>The cost of the repair.</td>
</tr>
<tr>
<td>X18.4 The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to:</td>
<td>The total of the Prices other than for the additional excluded matters.</td>
</tr>
<tr>
<td>The Contractor’s total liability for the additional excluded matters is not limited.</td>
<td></td>
</tr>
<tr>
<td>The additional excluded matters are amounts for which the Contractor is liable under this contract for.</td>
<td></td>
</tr>
<tr>
<td>Defects due to his design which arise before the Defects Certificate is issued,</td>
<td></td>
</tr>
<tr>
<td>Defects due to manufacture and fabrication outside the Site,</td>
<td></td>
</tr>
<tr>
<td>loss of or damage to property (other than the works, Plant and Materials),</td>
<td></td>
</tr>
<tr>
<td>death of or injury to a person,</td>
<td></td>
</tr>
<tr>
<td>delay damages in terms of X5 &amp; X7, and infringement of an intellectual property right.</td>
<td></td>
</tr>
<tr>
<td>X18.5 The end of liability date is</td>
<td>(i) Five (5) years after the completion of the whole of the works for latent Defects.</td>
</tr>
</tbody>
</table>
A latent Defect is a Defect which would not have been discovered on reasonable inspection by the Employer or the Supervisor before the defects date, without requiring any inspection not ordinarily carried out by the Employer or the Supervisor during that period.

If the Employer or the Supervisor do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the Employer or the Supervisor to have discovered the Defect.

**Z**

The Additional conditions of contract are

<table>
<thead>
<tr>
<th>Z1</th>
<th>Cession delegation and assignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Z1.1</td>
<td>The Contractor does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the Employer.</td>
</tr>
<tr>
<td>Z1.2</td>
<td>Notwithstanding the above, the Employer may on written notice to the Contractor cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities or to its client on whose behalf it acts as an Implementing Agent.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Z2</th>
<th>Joint ventures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Z2.1</td>
<td>If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the Employer for the performance of this contract.</td>
</tr>
<tr>
<td>Z2.2</td>
<td>Unless already notified to the Employer, the persons or organisations notify the Project Manager within two weeks of the Contract Date of the key person who has the authority to bind the Contractor on their behalf.</td>
</tr>
<tr>
<td>Z2.3</td>
<td>The Contractor does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the Employer having been given to the Contractor in writing.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Z3</th>
<th>Change of Broad Based Black Economic Empowerment (B-BBEE) status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Z3.1</td>
<td>Where a change in the Contractor's legal status, ownership or any other change to his business composition or business dealings results in a change to the Contractor's B-BBEE status, the Contractor notifies the Employer within seven days of the change.</td>
</tr>
<tr>
<td>Z3.2</td>
<td>The Contractor is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the Project Manager within thirty days of the notification or as otherwise instructed by the Project Manager.</td>
</tr>
<tr>
<td>Z3.3</td>
<td>Where, as a result, the Contractor's B-BBEE status has decreased since the Contract Date the Employer may either re-negotiate this contract or alternatively, terminate the Contractor's obligation to Provide the Works.</td>
</tr>
</tbody>
</table>
Z3.4 Failure by the Contractor to notify the Employer of a change in its B-BBEE status may constitute a reason for termination. If the Employer terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Ethics

Z4.1 Any offer, payment, consideration, or benefit of any kind made by the Contractor, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the Contractor’s obligation to Provide the Works or taking any other action as appropriate against the Contractor (including civil or criminal action).

Z4.2 The Employer may terminate the Contractor’s obligation to Provide the Works if the Contractor (or any member of the Contractor where the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices. Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the Employer or other people or organisations and including in circumstances where the Contractor or any such member is removed from the an approved vendor data base of the Employer as a consequence of such practice.

Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

Z5.1 The Contractor does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the Contractor, enters the public domain or to information which was already in the possession of the Contractor at the time of disclosure (evidenced by written records in existence at that time). Should the Contractor disclose information to Others in terms of clause 25.1, the Contractor ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the Contractor is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the Project Manager.

Z5.3 In the event that the Contractor is, at any time, required by law to disclose any such information which is required to be kept confidential, the Contractor, to the extent permitted by law prior to disclosure, notifies the Employer so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the Contractor may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the works or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the Project Manager. All rights in and to all such images vests exclusively in the Employer.
<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Z5.5</td>
<td>The Contractor ensures that all his subcontractors abide by the undertakings in this clause.</td>
</tr>
<tr>
<td><strong>Z6</strong></td>
<td>Waiver and estoppel: Add to core clause 12.3:</td>
</tr>
<tr>
<td>Z6.1</td>
<td>Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the Project Manager, the Supervisor, or the Adjudicator does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.</td>
</tr>
<tr>
<td><strong>Z7</strong></td>
<td>Health, safety and the environment: Add to core clause 27.4</td>
</tr>
</tbody>
</table>
| Z7.2   | The Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the works. Without limitation the Contractor:  
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations 2014, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of works; and  
- undertakes, in and about the execution of the works, to comply with the Construction Regulations 2014 and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensure that his Subcontractors, employees and others under the Contractor’s direction and control, likewise observe and comply with the foregoing. |
| Z7.3   | The Contractor, in and about the execution of the works, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the Contractor’s direction and control, likewise observe and comply with the foregoing. |
| **Z7.4** | Contractor’s liability as mandatory  
Notwithstanding any actions which the Employer may take, the Contractor accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Occupational Health and Safety Act, 1993 (Act 85 of 1993), and all its regulations, Disaster Management Act, 2002 Regulations and COVID-19 Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020 for which he is liable as mandatory. By entering into this Contract it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act. |
| **Z7.5** | Contractor’s Designer  
The Contractor and his designer shall accept full responsibility and liability to comply with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and the Construction Regulations, 2014 for the design of the Temporary Works and those parts of the Permanent Works which the Contractor is responsible to design in terms of the Contract. |
| **Z7.6** | Contractor to notify Employer of any incident  
The Employer retains an interest in all inquiries conducted under this Contract in terms of Section 31 and/or 32 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and its Regulations, Disaster Management Act, 2002 Regulations and COVID-19 Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020 following any incident involving
the Contractor and/or Sub-Contractor and/or their employees. The Contractor shall notify the Employer in writing of all investigations, complaints or criminal charges which may arise pursuant to work performed under this Contract in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and Regulations.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51
Z8.1 Within one week of receiving a payment certificate from the Project Manager in terms of core clause 51.1, the Contractor provides the Employer with a tax invoice in accordance with the Employer's procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
Z8.2 If the Contractor does not provide a tax invoice in the form and by the time required by this contract, the time by when the Employer is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the Employer in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
Z8.3 The Contractor (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the Employer’s VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events
Z9.1 Delete from the last sentence in core clause 61.3, “unless the Project Manager should have notified the event to the Contractor but did not”.

Z10 Employer’s limitation of liability
Z10.1 The Employer’s liability to the Contractor for the Contractor’s indirect or consequential loss is limited to R0.00 (zero Rand)
Z10.2 The Contractor’s entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the Employer's liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":
Z11.1 or had a judicial management or business rescue order granted against it (R8).

Z12 Addition to secondary Option X7 (or Options X5 and X7 used together) Delay damages (if applicable in this contract)
Z12.1 If the amount due for the Contractor’s payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the Employer may terminate the Contractor’s obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z13 Employer’s Step-in Rights and Additional Remedies
Z13.1 In the event the Contractor and or his subcontractor
(a) fails to carry out any obligation under the Contract and Works Information;
(b) fails to make good the failure and remedy it despite being required to do so by the Project Manager notice under Sub-Clause 16.1 [Early Warning] and Sub clause 13.1 (Communications, the said notice specifically noted the Project Manager if of the view that the Contractor or subcontractor will not meet the Key Dates and Completion dates if the
failure was not remedied, and

- such failure constitutes a material breach of the Contract (which for the purpose means a breach of the Contract which reasonably places the project at risk of non-completion by Completion Date)

(c) the Employer may, without prejudice to its other rights in Sub clause 9 (Termination), powers and remedies under the Contract or in law, shall be entitled to step in and take over the Works, at the Contractor risk to make good the failure and remedy it either himself or call other contractors, at the market costs of doing so for the account of the Contractor to partner with the contractor or complete the outstanding work.

**Z13.2** The Contractor shall co-operate with the Employer and facilitate and permit the use of all required Contractor’s Equipment, Goods, information, materials and other matter (including Contractor’s Documents and all other drawings, CAD files, technical data, models, plans, designs, diagrams, evaluations, details, specifications, schedules, reports, calculation results, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the Contractor under the Contract or otherwise for and/or in connection with the Works) and shall generally do all reasonable things required by the Project Manager to achieve this end; provided that where the foregoing constitute proprietary information, the Contractor’s obligation hereunder shall be limited to furnishing Works specific information in a form capable of being disclosed to third parties or providing assistance to third parties without requiring the Contractor to disclose non Works-specific source codes or other proprietary information.

**Z13.3** Any information, materials and other matter made available by the Contractor under this Sub-Clause Z.13 shall be used solely and exclusively for the purpose of making good and remediying the Contractor’s failure and shall thereafter be returned to the Contractor. Any such information, materials and other matter which is made available by the Employer to other persons as contemplated in this Sub-Clause Z13 shall be made available strictly in accordance with the foregoing and subject to confidentiality.

**Z14** Assessing the amount of work which the Contract Data states the Contractor will do himself

**Z14.1** The prices for the work done by the Contractor himself are the lump sums and the product of the quantity multiplied by the unit rates agreed to and included in the bill of quantities associated with this contract.

**Z14.2** The cost of people includes amounts for meeting the requirements of law and if applicable for pension provisions.

**Z14.3** The amount for Equipment includes amounts paid for hired Equipment and an amount for the use of Equipment owned by the Contractor which is the amount the Contractor would have paid if the Equipment had been hired.

**Z14.4** The assessment includes risk allowances for costs and time matters which are at the Contractor’s risk under this contract. The assessment is not revised if the forecast upon which it is based is shown by later recorded information to have been wrong.
### Z14.5
The effects of compensation events upon the prices for work done by the Contractor himself are assessed by forecasting the effect of a compensation event upon the cost arrived at in terms of Z14.1 to Z14.3 above or if the event has already occurred, the assessment is based on the cost due to the event which the Contractor has incurred.

### Z14.6
The provisions of Z14.4 above apply also to compensation events involving changes to the prices for work done by the Contractor himself.

### Z15
**Subcontracting, amendment to clause 26**

#### Z15.1
Clause 26.2 is amended by replacing the second sentence as follows:

A reason for not accepting a subcontractor is that

- his appointment will not allow the Contractor to Provide the Works;
- the Subcontractor is not based in or operating from KwaZulu Natal Province business premises;
- subcontracting the Subcontractor may result in the Contractor subcontracting more than 30% of the contract Price to a Subcontractor(s) with a B-BBEE status level of contributor that is not equal to or higher than that of the Contractor, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract;
- the Subcontractor had previous contracts with any organ of state suspended or terminated based on poor performance or has not been awarded further contracts due to poor performance as contractor or subcontractor; or
- the Subcontractor or any of its members or directors have been listed as persons that may not do business with the State or any organ of state by National Treasury or is a connected person to an employee of the State and may create a conflict of interest.

#### Z15.2
Clause 26.3 is amended and replaced as follows:

The Contractor submits the proposed conditions of contract for each subcontract to the Project Manager for acceptance.

The Contractor does not appoint a Subcontractor on the proposed subcontract conditions submitted until the Project Manager has accepted them. A reason for not accepting them is that

- they will not allow the Contractor to Provide the Works;
- the Contract Data is not sufficiently detailed to allow the Project Manager to make an informed decision about the Subcontractor's ability to provide the subcontracted works; or
- it contains “pay when paid” provisions in favour of the Contractor.

#### Z15.3
Clause 26.4 is deleted.

### Z16
**Time**

#### Z16.1
Amend this clause by inserting the following as clause 37.1

**Recovery Plan 37**

37.1 Where actual progress on Site is not in accordance with the most current programme or where the Employer or Project Manager is of the opinion, at any time during the execution of the works, that the Contractor will not achieve Completion on the date stated in the most current
programme, the Contractor shall prepare a recovery plan within 14 days of receipt of an instruction from the Employer or Project Manager requesting such recovery plan detailing:

- the Contractor’s plan to ensure that the works will achieve Completion on the date stated in the most current programme;
- all additional resources which will be employed by the Contractor in order to ensure that the Contractor achieves Completion on the date stated in the most current programme;
- any other information which may be required by the Employer or Project Manager to ascertain that the Contractor will achieve Completion on the date stated in the most current programme.

### Z17 Payment

#### Z17.1 Amend clause 50

Clause 50 amended by addition of the following clause

Materials and goods stored off site are not included in the amount authorised for payment

#### Z17.2 Amend clause 51.2

Amend this clause by deleting the second and the third sentences of the clause and replace them with the following: If a certified payment is late by more than 8 weeks, interest is paid on the late payment. Interest is assessed from 4 weeks after the date by which the late payment should have been made until the date when the late payment is made and is included in the first assessment after the late payment is made.

#### Z17.3 Payment 51 – amend the clause by adding the following clauses at the end of the clause:

51.5 Within one week of receiving a payment certificate from the Project Manager in terms of core clause 51.1, the Contractor provides the Employer with a tax invoice in accordance with the Employer's procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

51.6 If the Contractor does not provide a tax invoice in the form and by the time required by this contract, the time by when the Employer is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.

51.7 The Contractor (if registered in South Africa in terms of the Companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the Employer’s VAT number on each invoice he submits for payment.

### Z18 The Project Manager and Supervisor’s authority

#### Z18.1

The Employer is an organ of state and has to follow certain governance protocols as provided for in legislation, government instruction or its mandate. To ensure compliance with the governance protocols the authority of the Project Manager and Supervisor is limited and in the following they must obtain prior approval from the Employer:

- change of scope of work having a cost and/or time impact;
### Z18.2
The Project Manager or Supervisor may extend any period for reply or any other response required within a prescribed time limit in this contract, by written notice of not less than three (3) days, by up to twenty-eight (28) days to obtain the necessary authority regarding the matter under consideration.

### Z19 Access to Records

#### Z19.1
The contractor allows the project manager or Employer to inspect at any time within working hours the accounts and records which it is required to keep. This includes the verification of forecast and inspection of other records. The contractor shall obtain the same rights and obligations from subcontractors to the benefit of the Employer.

### Z20 Contractor management fee percentage

#### Z20.1
1. If the percentage of direct fees and subcontractor applicable fees are not disclosed upfront (clause 11.2(8)), the DBSA will assume these percentages to be zero (0%), and the contractor will not be entitled to further reimbursement for any compensation events other than the cost rate. Further the DBSA reserves the right to treat the contractors’ tender submission as non-responsive if the percentage fees are not completed.

2. Where a particular scope of work tendered by the contractor is subsequently changed to be executed by a subcontractor, the percentage fees completed under Clause 11.2(8) will first be discounted. The resulting amount will then be adjusted, and the subcontractor fee percentage applied on the cost for reimbursement of the principal management contractor will be applied. The fees declared in Clause 11.2(8) will have effect for adjustment of changes and all compensation events.

### Z21 Price adjustment for inflation

#### Z21.1
*Amend option X1*

**Option X1 amended by adding option X1 to be used with option F**

**The base date for indices** is the actual month in the final contract document (contract signature date).

The proportions used to calculate the **Price Adjustment Factor** are:

| 0. [*] | linked to the index for [*] |
**C1.2.2 CONTRACT DATA**

**Part two - Data provided by the Contractor**

*Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)*

Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.

**Notes to a tendering contractor:**

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)\(^1\) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

2. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data

3. Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field *once* and type in the data. Otherwise complete by hand and in ink.

---

\(^1\) Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009
Completion of the data in full, according to Options chosen, is essential to create a complete contract.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Statement</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>The Contractor is (Name):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Address</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tel No.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fax No.</td>
<td></td>
</tr>
<tr>
<td>11.2(8)</td>
<td><strong>The direct fee percentage is</strong></td>
<td>%</td>
</tr>
<tr>
<td></td>
<td><strong>The subcontracted fee percentage is</strong></td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>Work which the contractor will do himself</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Activity</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer to bills of quantities</td>
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<tr>
<td></td>
<td>If the percentage of direct fees and subcontractor applicable fees are not</td>
<td></td>
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<tr>
<td></td>
<td>disclosed upfront, the DBSA will assume these percentages to be zero (0%),</td>
<td></td>
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<tr>
<td></td>
<td>and the contractor will not be entitled to further reimbursement for any</td>
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<td></td>
<td>compensation events other than the Cost Rate. Further the DBSA reserves</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the right to treat the contractors’ tender submission as non-responsive</td>
<td></td>
</tr>
<tr>
<td></td>
<td>if the percentage fees are not completed.</td>
<td></td>
</tr>
<tr>
<td>11.2(18)</td>
<td>The working areas are the Site and</td>
<td></td>
</tr>
<tr>
<td>24.1</td>
<td>The Contractor's key persons are:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Name:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Job:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Responsibilities:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer to bills of quantities</td>
<td></td>
</tr>
</tbody>
</table>

Id: DBSA Document Number 0026-C010P-16-MTS-0001 Rev 00
Qualifications:
Experience:

2 Name:
Job
Responsibilities:
Qualifications:
Experience:

CV's (and further key persons data including CVs) are appended to Tender Schedule entitled [ ].

11.2(14) The following matters will be included in the Risk Register [note include risks identified at tender stage]

11.2(19) The Works Information for the Contractor's design is in:

31.1 The programme identified in the Contract Data is

C 1.3 FORMS OF SECURITIES

Pro-Forma NEC3 ECC Variable Performance Bond – Demand Guarantee

To: Employer

Dear Sirs

Reference No. [●] [Drafting Note: Guarantor/Bank reference number to be inserted]

Performance Bond: [Drafting Note: Name of Contractor to be inserted]

Employer: Contract Reference - [●] [Drafting Note: Contract reference number to be inserted]

1. In this Guarantee:

1.1 the following words and expressions have the following meanings:

1.1.1 “Guarantor” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Guarantor to be inserted] [●] Financial Services Board Registration number [●] NB: Guarantees submitted must be issued by either an insurance company duly registered in terms of the Short-Term Insurance Act, 1998 (Act 53 of 1998) or by a bank duly registered in terms of the Banks Act, 1990 (Act 94 of 1990) No alterations or amendments of the wording of the pro-forma will be accepted unless approved prior to it been issued by the Employer.
1.1.1 “Guarantor’s Address” - means [●]; [Drafting Note: Guarantor’s physical address to be inserted]

1.1.2 “Contract” - means the written agreement entered into between Employer and the Contractor on or about [●] 200[●] (Contract Reference No. [●]), as amended, varied, restated, novated or substituted from time to time; [Drafting Note: signature date and Contract reference number to be inserted]

1.1.3 “Contractor” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; [Drafting Note: Name and details of Contractor to be inserted]

1.1.4 “Employer” - means The Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the “IDD”), being a development finance institution reconstituted and incorporated as a juristic person in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997;

1.1.5 “Expiry Date” – means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 3.3;

1.1.6 “this Guarantee” - means this Performance Bond;

1.1.7 “Guaranteed Sum” - means the sum of [● - figure] ([● - words]) as reduced from time to time as provided for in paragraph 3 below; [Drafting Note: Maximum aggregate Guarantee amount to be inserted not exceeding 10% of the total of the Prices]

1.1.8 “Project Manager” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; and

1.1.9 a “recovery statement”, an “interim payment certificate”, a “Payment Certificate”, a “Certificate(s) of Completion” or “Defect Certificate” shall mean any such certificate as issued by the Project Manager;

1.2 Words and expressions defined in the Contract shall, unless otherwise defined in this Guarantee or otherwise required by the context of this Guarantee, have the same meanings in this Guarantee as those ascribed to them in the Contract, albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.

2. At the instance of the Contractor, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of Employer, as security for the proper performance by the Contractor of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to Employer, on written demand from Employer envisaged in paragraph 3 below and received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.

3. The Guarantor’s liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:

3.1 Maximum Guaranteed Sum (not exceeding 10% of the total of the Prices) in the amount of:

[● – amount in figures] ([● – amount in words]),

from and including the date of issue of this Guarantee and up to and including the Completion Date.

3.2 Reducing the Guaranteed Sum (not exceeding 5.0% of the total of the Prices) in the amount of:

[● – amount in figures] ([● – amount in words]),

from and including the day after the Completion Date up to and including the date of the issue of the Defects Certificate.
3.3 Reducing the Guaranteed Sum (not exceeding 0% of the total of the Prices) in the amount of:

R nil - from and including the day after the date of the issue of the Defect Certificate, where after this Guarantee for Construction shall expire. Where the final payment certificate reflects payment due to the Employer this Guarantee shall expire upon payment of the full amount certified. The Guarantor's liability limits set out in paragraphs 3.1 to 3.3 shall apply in respect of any claim received by the Guarantor during the Security validity.

4. A demand for payment under this Guarantee shall be made in writing at the Guarantor's address and shall:

4.1 confirm the “Guaranteed Sum” at the time of the demand;

4.2 state the amount claimed (“the Demand Amount”); and

4.3 state that the Demand Amount is payable to Employer in the circumstances contemplated in the Contract:

4.3.1 in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:

4.3.1.1 state that such first written demand notice issued by Employer to the Guarantor at the Guarantor's Address, with a copy to the Contractor, records that a period of seven (7) calendar days has elapsed since the issue of the first written demand notice in terms of paragraph 4.3.1.2 and that the sum certified has not been paid to date. Employer herewith calls up this Guarantee and demands payment of the sum certified from the Guarantor;

4.3.1.2 be accompanied by a copy of a preceding first written demand notice issued by Employer to the Guarantor at the Guarantor's Address, stating that payment of a sum certified by the Project Manager in an interim or final payment certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, Employer intends to call upon the Guarantor to make payment in terms of paragraph 4.3.1.1; and

4.3.1.3 shall be accompanied by a copy of the applicable payment certificate which entitles Employer to receive payment in terms of the Contract of the sum certified;

4.3.2 where the Demand Amount is for the Guaranteed Sum or the full outstanding balance thereof, Employer shall deliver a first written demand notice to the Guarantor at the Guarantor's Address calling up this Guarantee stating that:

4.3.2.1 the Contract has been terminated due to the Contractor's default and that the Guarantee is called up in terms of this sub-paragraph. This demand shall enclose a copy of the notice of termination; or

4.3.2.2 a provisional sequestration or liquidation court order has been granted against the Contractor and that the Guarantee is called up in terms of this sub-paragraph. The demand notice shall enclose a copy of the court order.

5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:

5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor’s obligation/s to make payment:

5.1.1 is and shall be absolute and unconditional in all circumstances; and

5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;

6. Employer shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting the Guarantor's liability under this Guarantee. This includes, without
limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.

7. Should Employer cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Employer shall be entitled to cede to such third party the rights of Employer under this Guarantee on written notification to the Guarantor of such cession.

8. The Guarantor’s obligations in terms of this Guarantee:

8.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

8.2 shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between Employer and the Contractor.

9. This Guarantee:

9.1 shall expire on the Expiry Date until which time it is irrevocable;

9.2 is saved as provided for in 7 above, personal to Employer and is neither negotiable nor transferable;

9.3 shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

9.4 shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to Employer and, secondly, obtaining any court order; and

9.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

10. The Guarantor chooses the domicilium citandi et executandi for all purposes in connection with this Guarantee at the Guarantor's Address.

Signed at_____________________________ Date_____________________________

For and behalf of the Guarantor

Guarantor Signatory 1:_________________ Guarantor Signatory 2:_________________

Capacity of Guarantor Capacity of Guarantor

Signatory 1:_____________________________ Signatory 2:_____________________________

Witness:_____________________________ Witness:_____________________________

(Printed Name of Witness)(Printed Name of Witness)
PART 2: PRICING DATA

NEC3 Engineering and Construction Contract (ECC) April 2013 revision Option F-Management Contract

<table>
<thead>
<tr>
<th>Document reference</th>
<th>Title</th>
<th>No of pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>C2.1</td>
<td>Pricing Instructions</td>
<td>2</td>
</tr>
<tr>
<td>C2.2</td>
<td>Bill of Quantities</td>
<td>270</td>
</tr>
<tr>
<td>C2.3</td>
<td>Pricing Assumptions: Option F</td>
<td>1</td>
</tr>
<tr>
<td>C2.4</td>
<td>First forecast of Total Defined Cost plus Fee</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Total number of pages</td>
<td>274</td>
</tr>
</tbody>
</table>
C2.1 PRICING INSTRUCTIONS

1. The Bills of Quantities is provided as a guide to Tenderers to price this Management Contract (NEC3 ECC Option F) to determine the first Forecast of the Total Defined Cost plus Fee and to use when subcontracting to ensure price certainty. The Tenderers must determine or ensure that the Bill of Quantities is complete and provide for all items to be priced for this contract. If an item is not separately priced then it will be accepted that its price element is included in the other items for that part of the works. The Bills of Quantities have been drawn up in accordance with the Standard System of Measuring Building Work (as amended) published and issued by the Association of South African Quantity Surveyors (Sixth Edition (Revised)), 1999. Where applicable the:
   a) Civil engineering work has been drawn up in accordance with the provisions of the latest edition of SABS 1200 Standardized Specifications for Civil Engineering Works.
   b) Electrical work has been drawn up in accordance with the provisions of the Model Bills of Quantities for Electrical Work, published by the South African Association of Quantity Surveyors, (July, 2005).
   c) All Rates MUST exclude ALL PROFITS which must be covered in the Direct and Indirect Fees as per contract data.
   d) Detailed pricing must be done for Health and Safety and broken down into pricing elements by the tenderer for all items that will be required in respect of training, equipment, signage and whatever the tenderer deems necessary. Any tender only reflecting a lump sum for Health and Safety will be disqualified.

2. The agreement is based on the NEC3 ECC Option F Management Contract. The additions, deletions and alterations to the NEC3 ECC Option F as well as the contract specific variables are as stated in the Contract Data and Z-Clauses. It will be assumed that prices included in the Bills of Quantities or first Forecast of the Total Defined Cost plus Fee are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published as provided for in the amended X2 before the closing date for tenders. (Refer to www.stanza.org.za or www.iso.org for information on standards).

3. The drawings listed in the Scope of Works used for the setting up of these Bills of Quantities are kept by the Project Manager or Supervisor and can be viewed at any time during office hours up until the completion of the works but any omissions in the Bills of Quantities will not be a compensation event.

4. Reference to any particular trademark, name, patent, design, type, specific origin or producer is purely to establish a standard for requirements. Products or articles of an equivalent standard may be substituted.
C2.2 BILL OF QUANTITIES

Use this page as a cover page to the Contractor's Bill of Quantities as used in support of arriving at the first Forecast of the Total of the Defined Cost, which must be submitted as supporting documentation with any other pricing documents the Tenderers used to arrive at the first Forecast of the Total Defined Cost plus Fee. The Bill of Quantities will also be used going forward to inform future forecasts and shall be used to price subcontracts.

1) Tenderers are to ensure that adequate provision for the health and safety measures have been made and provided detailed breakdown in the first Forecast of the Total of the Defined Cost, as required by the Department of Labour.

2) The PDF/ original format Bill of Quantities must be populated by hand in black ink and will be the document used for evaluation purposes and if tenderer is successful this Bill of Quantities will be balanced in conjunction with the Project Manager and then applied for forecasting and subcontracting.

3) Tenderers are also required to electronically populate the Excel format and add to the required Flash Drive with your submission. This will be used to support verification of pricing errors.

C2.3 PRICING ASSUMPTIONS: OPTION F

How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract Option F states:

<table>
<thead>
<tr>
<th>Identified and defined terms</th>
<th>11.2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(24) Defined Cost is</td>
<td></td>
</tr>
</tbody>
</table>

- The amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for:
  - retention,
  - payment to the Employer as a result of the Subcontractor failing to meet a key date,
  - the correction of Defects after Completion,
  - payment to Others,
  - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract; and
  - the prices for work done by the Contractor himself.

less Disallowed Cost (see 11.2(26) for full definition).

(29) The Price for Work Done to Date is the total Defined Cost which the Project Manager forecasts will have been paid by the Contractor before the next assessment date plus the Fee.

(32) The Prices are the Defined Cost plus the Fee.
This confirms that Option F is a cost reimbursable form of contract where the Project Manager has to forecast what the Contractor will have paid (NOTE, “paid”) with the two amounts due for payment being:

(a) payment due to Subcontractors, uplifted by the subcontracted fee percentage, plus
(b) the prices for work done by the Contractor himself, uplifted by the direct fee percentage.

less Disallowed Cost.

Payments due to Subcontractors by the Contractor will also be Defined Cost plus Fee in terms of the NEC3 Engineering and Construction Subcontract (ECS3) which the Contractor will have with his Subcontractors.

Clause 52 requires that the Contractor keep records of Defined Cost for the Project Manager to inspect when assessing amounts due for payment. In effect this is “open book” accounting for the true assessment of cost as defined in the contract.

The work which the Contractor will do himself is stated as activities in the Contract Data priced either as lump sums or rates. These prices shall not include any cost, profit or risk allowance already allowed for in the Contractor’s direct fee percentage as the prices are uplifted by the direct fee percentage for payment when the work covered by the prices is done.

C2.4 The first forecast of total Defined Cost plus Fee for the whole of the works

[Notes to the document compiler (to be deleted before contract award):

If it is possible to do a first forecast at award stage, this could be included here. The purpose of this would be to provide a budget for the Employer’s operational requirements.

After contract award forecasts are provided per clause 20.4 at the intervals stated in the Contract Data.

The forecast would be broken down into the total of the prices for work which the Contractor is to do himself uplifted by the direct fee percentage plus estimated total payments to Subcontractors uplifted by the subcontracted fee percentage for the whole of the works continuously using the Bills of Quantities as a forecasting guide as adjusted in terms of X1 if applicable.

A summary of the first forecast could have the format given below.

PART A: Forecast of work Contractor is to do himself using the prices (lump sum or unit rate) for each activity stated in the Contract Data.

<table>
<thead>
<tr>
<th>Item no.</th>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SECTION 1: PRELIMINARIES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SECTION 2: EXTERNAL WORKS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SECTION 3: TEMPORARY WORKS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(A) Total cost of work Contractor is to do himself (excluding VAT):</td>
<td></td>
</tr>
</tbody>
</table>
PART B: Forecast amount of payments due to Subcontractors:

<table>
<thead>
<tr>
<th>Item no.</th>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SECTION 4: SUB-CONTRACT A: BUILDING WORKS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SECTION 5: SPECIALIST SUB-CONTRACTORS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SECTION 6: PROVISIONAL SUMS AND ALLOWANCES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total cost of work done by Subcontractors</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Management Fee ......% <em>(subcontracted fee percentage applied to the above total)</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(B) Total Defined Cost plus Fee of work done by Subcontractors</td>
<td></td>
</tr>
</tbody>
</table>

Total forecast cost of work done (A plus B)

I, ______________________________________ of ______________________________________,
(Authorised Signatory) (Company Name)

Hereby acknowledge having read, understood and agree to requirements as set out in C2.1 to C2.3 and warrant that the documents submitted are true and accurate.

_________________________________________  ______________
(Signature) (Date)
C2.5 AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES BY TENDERER

Subject to condition stated in Tender Data:

Use this page as a cover page to the Amendments, Qualifications and Alternatives by Tenderer
# PART 3: SCOPE OF WORK

<table>
<thead>
<tr>
<th>Document reference</th>
<th>Title</th>
<th>No of pages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>This cover page</td>
<td>1</td>
</tr>
<tr>
<td>C3.1</td>
<td>Project Specifications</td>
<td>11</td>
</tr>
<tr>
<td>C3.2</td>
<td>Particular Specifications</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Total number of pages</td>
<td>13</td>
</tr>
</tbody>
</table>
C3.1 PROJECT SPECIFICATIONS

1. DESCRIPTION OF THE WORKS

1.1. Employer's objectives

The Employer's objectives are to deliver public infrastructure using methods to provide (i) temporary employment opportunities to local unemployed community and to provide training or skills development to these locally employed workers and (ii) development and utilisation of local suppliers, manufacturers, professional service providers, contractors and subcontractors. The Employer's objectives also include development of emerging contractors through targeted transformation and development programmes through its procurement on national or regional basis. In this tender the objective for skills development and targeted development will be focused on suppliers and contractors in the KwaZulu Natal through the use of a management contract as contemplated in this tender.

1.2. Overview of the works

The Department of Trade and Industry through the Ithala Development Finance Cooperation wish to address the poor state of the industrial zones and parks in the provinces to stimulate local economy and provide employment to the communities. The existing facilities Phase 1 was to ensure security is installed which consist of Fencing, the park state needs further revitalization and to be upgraded to revitalise the economic zones and industrial parks to spur economic activities and provide employment:

- Strategic goal: to urgently address the refurbishment and maintenance of existing infrastructure, thereby ensuring that all infrastructure meet the minimum acceptable standards.

- **Outcome statements**: Revitalization of Industrial Parks, prioritizing essential top structure refurbishments, security and electricity upgrades.

- **Outputs**: Fencing, CCTV, Essential top structure refurbishment, and top structure refurbishment.

- **Primary outcome**: To promote industrialisation, manufacturing and job creation to boost South Africa's economic growth in the medium to long-term.

The Employer’s objective is to attend to the immediate repairs, functional improvement and refurbishment prioritise works in the parks in phases, with this phase addressing the security features and building refurbishment.
1.3. Extent of the works

The Works to be carried out by the Contractor and sub-contractors under this Contract comprise mainly the following and be done on a sectional completion base of phases 1 and 2 (Refer to the drawings for detailed specifications of work to be done):

<table>
<thead>
<tr>
<th>Work Package</th>
<th>Project Description</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Revitalization of Isithebe IP-Phase 2</td>
<td>The Contractor will be required to perform the following functions:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELECTRICAL RETICULATION/ INSTALLATION</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OF NEW HIGH MAST</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The specific scope is outlined in the pricing document.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ALTERATIONS AND DEMOLITIONS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remove existing wire diamond mesh fence including posts at ±2500 metre centres including uprooting the posts concrete foundation, and store where directed by Ithala</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remove existing metal palisade fences 2.0m high including posts as ditto and deliver to facility management and store where directed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remove and uproot existing gate posts including removing posts' concrete foundations; deliver gate posts to where directed by facility management.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remove existing entrance gates to factories size not exceeding 6m wide x 2m high and hand over and store where directed by facility management.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Break 400mm wide into 100mm existing concrete surface bed at gates, including disposal of rubble to approved dumping size. Prepare the resulting trench and make ready to receive concrete (concrete measured elsewhere</td>
</tr>
<tr>
<td></td>
<td></td>
<td>REPLACEMENT OF ROOF COVERINGS</td>
</tr>
</tbody>
</table>
Remove existing sheet metal roofing, roof insulation of all types, side cladding and store at a designated place.

Roofing sheet material need to be suitable for coastal areas as high moisture content in the air coupled with emissions in the air result in rapid deterioration of the metal roof sheets.

INSTALLATION OF NEW ROOFS

"Modek" or other similar and approved polycarbonate translucent roof sheets 0.8mm with IBR 686 profile or other profile matching roof sheet in ditto; blue colour.

0.80mm thick IBR 686 or other equal and approved sheeting as side cladding matching the roofs but excluding insulation.

0.80mm thick IBR profile side flashings to roof and side cladding fixed to sheets with appropriate brackets of other sliding brackets at apex, with troughs at apex stop end for full depth of sheet to prevent penetration of wind driven water. The trough shall be lipped at the eaves end to form a drip. Transverse flashing flanges shall be notched to the sheet profile where necessary.

New roof extractors "610 wind master tornado turbine roof ventilator" or other equal and approved product.

HIGH SECURITY METAL INVISIBLE FENCE

2400mm nominal height invisible fence complete including poles at 2550mm centres, and on top with 400mm high flat wrap razor wire.

Extra over ditto but for 600mm deep anti-burrow section between poles, fixed to top of ground beam in item above.
Gates: 6000 x 2400mm High Gates with invisible steel mesh fencing fixed to the entrances including ground track, painting, installations, testing and provision of certificates

“Bastian” or similar concrete bollards 415mm square x 815mm high in grey colour, including installation and protruding 600mm above the ground

5Mpa concrete with mesh ref 193 cast in 3.0 meter panels, food float finish including preparatory excavation works, earth filling 150mm thick, and compacting to 95% Mood AASHTO

PROVISIONAL SUM

- Electrical Reticulation for refurbished factories

Construction Management

The Contractor shall assign properly qualified and competent resources to oversee the construction of the works including Professional team and Land Surveyor. The Contractor will assign as a minimum one (1) senior foreman and Construction Manager for the Works. The Contractors team composition must be as stated in the Contract data.

Refurbishment Works"

Refurbishment of Stand 83- Digital Hub including Electrical works, Mechanical works, Civil works, Plumbing, Repair of Roofs.

Installation for new manhole cover and frame including new Cast Iron manhole cover and frame size 400x600 medium duty
### Repair of Ceilings, Screed and New Flooring
- Installation of Invisible Fencing
- Repair Clearing storm water drainage 400mm wide x 250mm high of all vegetation ad rubble Parking space
- Construction of Eating Area

---

### EXTENT OF THE WORKS

#### Preliminaries

#### Alterations and Demolitions

- Provisional Sums- Refurbishment of Stand 83(Digital Hub) and repair of electrical reticulations
- Electrical works/ High Mast
- Installation of Invisible Fence- As per BOQ Specification, Pedestrian Gates and Swing Gates Including Guard Houses.
- Roof covering upgrades

---

### Services

Before any work commences on site, the Contractor shall contact all private owners or public authorities controlling services so that they may, either protect, move or relocate any service as required, or confirm that all such work has been completed.

Payment will not be made for any inconvenience caused to the Contractor in regard to any services crossing the site or any authority working on or relocating any such services, nor will any delays caused by such work or relocation be accepted as a basis for claiming an extension of time for completing the works.

All known existing services and those services which require relocation and protection, are shown on the services plans. The Contractor's attention is drawn to the fact that such services information is based on information supplied by others, and the accuracy and completeness of this information has not been confirmed and the Employer will not be liable for any inaccurate information and compensation events with regard to inaccuracies will not be entertained.

The Contractor will therefore be required to proceed with extreme caution in order to avoid damage to existing services and have to verify the correctness of any information supplied. Before commencing any work in the vicinity of services, the Contractor shall contact the relevant service authorities for assistance in locating the exact position of the services and where necessary the
Contractor shall accurately locate the services by careful hand excavation. Any damages caused by the Contractor or its subcontractors to such service infrastructure will be for the account of the Contractor and the Contractor hereby indemnifies the Employer against any claims or damages that the respective service owners may bring against the Employer. Any insurance that the Contractor put in place in this regard will cover the Employer as a co-insured.

In general, the Project Manager may call upon the Contractor to re-excavate trenches previously dug and backfilled by others where in the opinion of the Project Manager such work is necessary to ensure the stability of any other works over such trenches. This in no way relieves the Contractor of his responsibilities in terms of the works.

**Accommodation of Traffic**

The Contractor is to liaise with the KwaZulu Natal Provincial Department of Roads & Transport (for provincial roads) and the Mandini District Municipality Roads & Stormwater Department (for municipal roads) with regards to any temporary road closures as required during this contract.

Accommodation of traffic during construction shall be undertaken to the requirements and details provided by the Project Manager.

**Coordination with Other contractors**

Other contractors, who are engaged in the construction of similar works, could be working within the sites of the Contractor. The Contractor will be required to provide all necessary assistance to them, and to liaise with them in respect of their programme in order to avoid any delays to either contract.

**Temporary Works and Traffic Accommodation**

As the Works are to be constructed within a built-up urban area, the Contractor will be required to carry out all temporary works that will be necessary to maintain the flow of traffic and to ensure that pedestrian and vehicular access is maintained to local residential buildings and businesses.

**Setting Out of Works**

Whilst surveys have been carried out of the site, and the designs based on such surveys, it is the responsibility of the Contractor to recheck all the benchmarks and protect the benchmarks from damage at the start of the contract. It is the Contractor's responsibility to set out the Works and any discrepancies in the design or setting out shall be identified and brought to the attention of the Project Manager promptly so they can be corrected before any abortive expenditure is incurred.

**1.4. Location of the works**

The Works to be constructed are located in the area of jurisdiction of the Mandini District Municipality.
1.5. Occupational Health and Safety

The contractor needs to comply with the following legal requirements:

- Disaster Management Act, 2002 Regulations as amended;
- Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020
- Annexure A - DBSA Occupational Health and Safety Baseline specification and Amended COVID-19 Health and Safety Baseline Specifications
- Annexure C - Safety, Health, Environment and Quality Policy.

2. DRAWINGS

The drawings used for setting up the Bills of Quantities are as follows:

Drawings Used For Compiling Bills of Quantities

As stated in the Pricing Instructions in C2 above the Bills of Quantities is only a guide to assist Tenderers to arrive at the first Forecast of the Total of the Defined Costs and to price subcontracts going forward but not to be used for re-measurement or any other purpose.

3. PROCUREMENT

3.1. Preferential procurement procedures

The works shall be executed in accordance with the conditions attached to preferences granted in accordance with the referencing schedule.

3.2. Scope of mandatory subcontract work

3.2.1 In terms of this tender and the contract to be awarded, thirty (30%) percent of the first Forecast of the Total of Defined Cost (Contract Price), excluding the direct and indirect fee, must be subcontracted by the management contractor. In accordance with the requirements of regulation 9 read with Regulation 12 of the Preferential Procurement Regulations 2017 issued in terms of the Preferential Procurement Policy Framework Act, Act 5 of 2000, (PPPFA) a minimum of thirty (30%) percent of the Contract Price to be subcontracted to the categories of potential subcontractors specified in the regulations and as set out in the PPPFA Prequalify and subcontracting Schedule referred to in Volume 2 of the Tender invitation for RFP 048/2020.
3.2.2 To the extent that the subcontracting of the categories referred to in 3.2.1 above is less than seventy (30%) of the Contract Price other categories may be subcontracted firstly on basis that ownership is at least fifty one percent (51%) Black Owned as defined for the BBBEE Act and lastly on an open basis on all categories, always provided that the subcontractors are KwaZulu Natal Province (KZN) based.

3.2.3 Further to the above subcontracting requirements the management contractor shall engage subcontractors in the construction industry firstly with a CIDB GRADE 7GB registration and secondly with a grade 7 registration, all KZN based. The management contractor shall ensure that part of the 30% allocated to the sub-contractors, minimum threshold of 10% of that works are allocated to the enterprises owned by black women and minimum threshold of 15% allocated to the enterprises owned by black youth. As part of the subcontracting a formal development plan to be included which would assist such subcontractors to apply for higher grading registration and strengthen the expertise and quality work delivery of such subcontractors.

3.2.4 In the instance where works is to be subcontracted, competitive tenders shall be invited in respect of each portion of works in accordance with the relevant provisions of the latest edition of the CIDB Standard for Uniformity in Construction Procurement. The Contract Data in the associated procurement documents shall be based on the use of BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement / CIDB Standard subcontract (labour only) / SAFCEC General conditions of subcontract (2003 edition) (select appropriate option) / NEC Engineering and Construction Subcontract / NEC Engineering and Construction Short Subcontract with minimal project specific variations and amendments that do not change their intended usage.

3.2.5 Subject to core clause 26 read with Z15 of the NEC3 ECC Option F, the Contractor shall without delay enter into contract with the successful tendering subcontractor based on their accepted tender submission. The Contractor shall remain responsible for providing the subcontracted portion of the works as if the work had not been subcontracted.

3.2.6 The Contractor shall indicate within the list of proposed sub-contractors the names and copies of the registration documents of the proposed sub-contractor registered with the necessary built environment councils and CIDB.

3.2.7 In the event that the Contractor has to replace a subcontractor for whatever reason the principles set out above shall apply to such replacement with all the conditions in respect of subcontracting.

3.2.8 In the event that the Contractor is unable to replace a subcontractor by appointment or cession of the subcontract, the Contractor may approach the Employer submitting alternative plans to complete that part of the Works, indicating the impact on time and cost for this project. The Employer shall consider the submission and respond within 14 days, failing which it is deemed that the Employer does not approve the submission through this notice, and may request a revised proposal.

3.2.9 The full requirements for the Contract Participation Goal is set out in the Annexure CPG attached hereto and if any conflict in respect of the applicable conditions the CPG Annexure will prevail.
4. CONSTRUCTION

4.1. Applicable SANS 2001 standards for construction works

The following parts of SANS 2001 Construction works standards and associated specification data are applicable to the works:

1) SANS 2001BE1
2) SANS 2001BS1
3) SANS 2001CC2
4) SANS 2001CG1
5) SANS 2001CM1
6) SANS 2001CS1
7) SANS 2001CT2
8) SANS 2001DP1
9) SANS 2001DP2
10) SANS 2001DP3
11) SANS 2001DP4
12) SANS 2001DP5
13) SANS 2001DP6
14) SANS 2001EM1

The abovementioned South African National Standards make several references to the Specification Data for data, provisions and variations that make these standards applicable to this contract. The Specification Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and these standards.

Each item of Specification Data given below is cross-referenced to the clause in the standard to which it mainly applies.

4.2. Applicable national and international standards

- Standardized Specifications for Civil Engineering Construction SANS 1200
- The National Building Regulations SABS0400
- Construction and Management Requirements for Works Contracts SANS1921-1
- Targeted Construction Procurement SANS1914-4
4.3. Certification by recognized bodies

Not Applicable

4.4. Plant and materials provided by the employer

Not Applicable

4.5. Services and facilities provided by the employer

Not Applicable

4.6. Plant and equipment

The plant and equipment used on the site shall not be inferior to that described in the Schedule of Plant and Equipment.

5. Management

5.1. SANS 1921 standards

The SANS 1921 Construction works standards and associated specification data are applicable to the works:

The abovementioned South African National Standards make several references to the Specification Data for data, provisions and variations that make these standards applicable to this contract. The Specification Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and these standards.

Each item of Specification Data given below is cross-referenced to the clause in the standard to which it mainly applies.
The associated Specification Data is as follows:

<table>
<thead>
<tr>
<th>Clause</th>
<th>Specification data</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SANS 1921-1, Construction and management requirements for works contracts – Part 1: General engineering and construction works</strong></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Essential data</th>
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<tbody>
<tr>
<td>4.1.7</td>
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<tr>
<td>4.2.1</td>
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<td>4.2.2</td>
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<tr>
<td>4.3.1</td>
</tr>
</tbody>
</table>

1) Program to be submitted in Microsoft Project format  
2) Gantt chart to indicate critical path and progress  
3) Gantt chart to be updated before monthly site meeting |
| 4.3.3 | The notice period for inspection is 2 Days |
| 4.9.3 | The trees and shrubs which are not to be disturbed are to be identified on site. Where possible, the disturbance of trees should be avoided. |
| 4.14.3 | The office accommodation, equipment, accommodation for site meetings and other facilities for use by the employer and his agents are: |

1) **Site office** which shall be used for site meetings and for the contractor’s use. Such an office shall comprise a minimum of 20m² in area and 3 m high, be ventilated, have good lamination, must be reasonably sound proof, and have a hard floor construction. It shall be furnished with a desk on which drawings can be rolled open and on which there is sufficient writing space and sufficient temporary chairs or benches to accommodate all persons present at site meetings. *(Minimum 15-seater)*  
2) The following facilities will be supplied to the employer’s representatives:  
   - 15 Hardhats for employer’s representatives visiting the site  
   - 15 Safety (High visibility) jackets for employer representatives visiting the site |
- 15 sets of safety Goggles
- 15 sets of earplugs (when applicable)

4.14.5 The Contractor is required to provide latrine and ablution facilities for the exclusive use of the professional team and client.

4.14.6 The requirements for the provision and erection of separate sign boards for consultants and subcontractors are:
   1) See Bill of Quantities.

4.17.1 The requirements for the termination, diversion or maintenance of existing services are:
   1) none

4.17.3 Services which are known to exist on the site are:
   1) Water network.
   2) Electricity reticulation, sub-surface and overhead.
   3) Sewer Network.
   4) Municipal roads.

4.17.4 The requirements for detection apparatus are:
   1) Communication with DTI / Ithala officials.

Additional clauses

1 Site meetings and procedures
The Employer’s Representative and the Contractor shall hold meetings relating to the progress of the works at regular intervals and at other such times as may be necessary. The Contractor shall attend all site meetings and shall ensure that all persons under his jurisdiction are notified timeously of all site meetings should the Employer’s Representative require their attendance at such meetings.

The Contractor shall keep on site a set of minutes of all site meetings, daily records of resources (people and equipment employed), a site instruction book, a complete set of contracts working drawings and a copy of the procurement document and make these available at all reasonable times to all persons concerned with the contract.

2 Water and electricity
The Employer does not warrant that any water supply or electricity supply that may exist is adequate for the
proper execution of the works. The responsibility strategies in terms of the tabulation below that will apply to the contract is:

a) water : A
b) electricity: A

<table>
<thead>
<tr>
<th>Service</th>
<th>Option</th>
<th>A Contractor responsibility</th>
<th>B Employer responsibility</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td></td>
<td>The Contractor is to provide, and remove and make good upon completion, all the necessary temporary plumbing connections and purchase water from the local authority for the works at his own cost.</td>
<td>The Contractor shall make, and upon completion remove, all the necessary connections to the Employer’s water supply at designated points and make use of water free of charge for construction purposes only.</td>
<td>The Contractor shall make, and upon completion remove, all the necessary connections and water meters to the Employer’s water supply at designated points and be responsible for costs associated with all water consumed.</td>
</tr>
<tr>
<td>Electricity</td>
<td>The Contractor is to provide, and remove and make good upon completion, all the necessary temporary electrical connections and installations and purchase electricity form the local authority / ESKOM for the works at his own cost.</td>
<td>The Contractor shall make, and upon completion remove, all the necessary electrical connections to the Employer’s electrical supply at designated points and make use of electricity free of charge for construction purposes only.</td>
<td>The Contractor shall make, and upon completion remove, all the necessary connections and meters to the Employer’s electrical supply and be responsible for costs associated with all electricity consumed.</td>
<td></td>
</tr>
</tbody>
</table>

The following temporary services is the responsibility and will be supplied by the contractor:

- Security
- Sewer services in the form of temporary toilets
- Waste disposal facility

SANS 1921-5, Construction and management requirements for works contracts – Part 5: Earthworks activities which are to be performed by hand.
5.1 The depth of trenches which are to be excavated by hand is 1.5 metres.

Additional clauses:

1 Stone pitching and rubble concrete masonry
   All stone required for stone pitching and rubble concrete masonry, whether grouted or dry, shall be collected, loaded, off loaded and placed by hand.
   Sand and stone shall be hauled to its point of placement by means of wheelbarrows where the haul distance is not greater than 150m.
   Grout shall be mixed and placed by hand.

2 Manufactured Elements
   Elements manufactured or designed by the Contractor, such as manhole rings and cover slabs, precast concrete planks and pipes, masonry units and edge beams shall not individually, have a mass of more than 320kg. In addition, the items shall be large enough so that four workers can conveniently and simultaneously acquire a proper hand hold on them.

SANS 1921-6, Construction and management requirements for works contracts – Part 6: HIV/AIDS awareness.

4.2.1(a) A qualified service provider is a service provider that is one that is accredited or provisionally accredited training service provider in the HIV/AIDS field.
   A list of accredited service providers can be obtained from the Construction SETA (CETA) (tel 011-265 5900), Health and Welfare SETA (HWSETA) (011-622 6852) or on the Health and Welfare SETA website: www.hwseta.org.za.

4.2.1(a) The HIV/AIDS awareness programme is to be repeated at four month intervals throughout the duration of the contract. (Four times in total, including the initial one at the start of the contract.)

Additional clauses

The duration of each workshop is not to be less than 2 ½ hours.

5.2. Recording of weather
   The Contractor shall erect an effective rainfall gauge on the site and record the daily rainfall figures in a book. Such book shall be handed to the employer’s representative for his signature no later than 1 day after rain that is considered to justify an extension of time occurs.

5.3. Unauthorised persons
The Contractor shall keep unauthorized persons from the works at all times. Under no circumstances may any person except guards be allowed to sleep on the building site.

5.4. Management meetings

A Schedule of meetings will be agreed with the contractor.

5.5. Daily records

The Contractor is instructed to keep a set of signed off daily diaries with specific detail relating to Contract Participating Goals (CPG) as provided for in 3 above.

5.6. Payment certificates

Payment Certificates will be done as per Clause 50.0 of the NEC3 ECC Option F. Payments will not be processed unless all the required job creation statistics and all subcontracting supporting information are attached to the claim for payment.

5.7. Job statistics/targeted labour

The contractor must provide monthly statistics to the DBSA indicating the number of new jobs created through this contract. This statistic must be provided with each monthly payment certificate using the electronic prescribed format, which will be provided by the Project Manager of this project to the successful bidder.

5.7.1 Training of targeted labour (non-accredited training)

a) The Contractor shall provide all the necessary on-the-job training to targeted labour to enable such labour to master the basic work techniques required to undertake the work in accordance with the requirements of the contract in a manner that does not compromise worker health and safety.

b) The contractor shall be responsible for scheduling the training of workers and shall take all reasonable steps to ensure that each beneficiary is provided with a minimum of six (6) days of formal training if he/she is employed for 3 months or less and a minimum of ten (10) days if he/she is employed for 4 months or more.

c) The Contractor shall do nothing to dissuade targeted labour from participating in training programmes.

d) Proof of compliance with all the requirements must be provided by the Contractor to the Employer prior to submission of the final payment certificate.

5.7.2 Employment of local labour

a) It is the intention that this Contract should make maximum use of the local labour force that is presently under-employed. To this end the Contractor shall limit the utilisation on the Contract of non-local employees to that of key personnel only and to employ and train local labour to the extent necessary for the execution and completion of this Contract.
b) The Contractor shall fill in the form entitled Key Personnel in the Forms to be completed by the Bidder. The data stated on the above-mentioned form will be strictly monitored during the Contract period and any deviations therefrom shall be subject to the prior approval of the Project Manager, which approval shall not be unreasonably withheld.

c) The employment of casual labour will be done in co-operation with community leaders and local structures. The bidder shall ensure that all remuneration paid to employees is in line with the relevant sectorial determination in terms of the Basic Conditions of Employment Act, No 75 of 1997, as determined by the Department of Labour.

C3.2 PARTICULAR SPECIFICATIONS

In addition to the Standardized and Project Specifications the following Particular Specifications shall apply to this contract and are bound in hereafter.

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<tr>
<th>PARTICULAR SPECIFICATION</th>
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<tbody>
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<td>POHS: HEALTH AND SAFETY SPECIFICATIONS AND AMENDMENTS FOR COVID-19</td>
<td>Annexure A</td>
</tr>
<tr>
<td>B/RA: BASELINE RISK ASSESSMENT AND AMENDMENTS FOR COVID-19</td>
<td>Annexure B</td>
</tr>
<tr>
<td>SHEQ: DBSA SHEQ POLICY</td>
<td>Annexure C</td>
</tr>
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</table>
PART 4: SITE INFORMATION

<table>
<thead>
<tr>
<th>Document reference</th>
<th>Title</th>
<th>No of pages</th>
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<tr>
<td>This cover page</td>
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</tr>
<tr>
<td>C4.1</td>
<td>Information and Map</td>
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<tr>
<td>C4.2</td>
<td>Existing Buildings Occupied</td>
<td>1</td>
</tr>
<tr>
<td>Total number of pages</td>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>
C4.1 INFORMATION AND MAP

The Works to be constructed are located in the area of jurisdiction of the Mandini District Municipality in KwaZulu Natal Province.

REVITALIZATION OF ISITHEBE INDUSTRIAL PARK PHASE 02-KZN

Locality MapName: Mandeni Latitude: 29°08’48”S Longitude: 31°24’50”E Region: Mandeni Ward 3

Region: Mandeni Local Municipality Region: iLembe District Municipality State: KwaZulu-Natal Country: South Africa

Mandeni map /Isithebe Industrial Park
https://satellites.pro/Mandeni_map.South_Africa#-29.099958,31.419997,15

N.B POSITION OF HIGH MAST LIGHT- MAP
APPOINTMENT OF A TURNKEY CONTRACTOR FOR THE REVITILIZATION OF THE ISITHEBE INDUSTRIAL PARK- PHASE 2 IN THE KWAZULU NATAL PROVINCE-DTI

Tender No. RFP139/2020

IDD Doc. Number: 0026-C010P-16-MTS-0001 Rev 00
C4.2 EXISTING FACTORIES OCCUPIED

As the Works are to be constructed within an existing and Operational Factories, the Contractor will be required to carry out all temporary works, including notification of work with the Tenants in order to ensure Operation within factories are not affected.

That will be necessary to maintain the operation running.