



THE CONTRACT

**NEC 3 Engineering and Construction Contract Option B:
Priced Contract with Bill of Quantities of April 2013
(including amendments).**

TENDER NO. RFP 259/2021

APPOINTMENT OF A CONTRACTOR TO MANUFACTURE, DELIVER MODULAR UNITS (ALTERNATIVE BUILDING TECHNOLOGY) AND COMMISSION FOR CLUSTER B (7) SCHOOLS IN THE EASTERN CAPE WITHIN THE ACCELERATED SCHOOLS INFRASTRUCTURE DELIVERY INITIATIVE (ASIDI) 47 PROGRAMME ON BEHALF OF THE DEPARTMENT OF BASIC EDUCATION (DBE) - CLUSTER B

THE DEVELOPMENT BANK OF SOUTHERN AFRICA



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THE CONTRACT

- C1 : AGREEMENT AND CONTRACT DATA**
- C2 : PRICING DATA**
- C3 : SCOPE OF WORK**
- C4 : SITE INFORMATION**

PART 1: AGREEMENT AND CONTRACT DATA

- 1. NEC 3 Engineering and Construction Contract Option B:** Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	4
C1.2	Contract Data	1
	Part One – Data provided by the <i>Employer</i>	22
	Part Two – Data provided by the <i>Contractor</i>	2
C1.3	Performance Guarantee	4
	Total number of pages	33

C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter a contract for the procurement of: **CONTRACT No: RFP 259/2021** for the appointment of a Contractor to manufacture, deliver modular units (Alternative Building Technology) and commission for Cluster B (7) Schools in the Eastern Cape within the accelerated schools infrastructure delivery initiative (ASIDI) 47 programme on behalf of the Department of Basic Education (DBE)

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

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 Contractor 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 exclusive of VAT is	
Value Added Tax @ 15% is	
The offered total of the amount due inclusive of VAT is	
(in words)	

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 or issue a conditional Letter of Acceptance subject to certain conditions which must be fulfilled prior to final acceptance and signing of the acceptance part of this form, whereupon the Tenderer becomes or may become the party named as the *Tenderer* in the *Conditions of Contract* identified in the Contract Data.

Signature(s)

Name(s)

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 Contractor 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 Form of Offer and Acceptance)
- 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 Contract Data and any addenda thereto listed in the Contract 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 within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), or the date specified in the conditional Letter of Acceptance, whichever date is the earliest, contact the Employer's representative (whose details are given in the contract data or Letter of Acceptance) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data or Letter of Acceptance. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement and the Employer may in its sole discretion accept such repudiation and either appoint one of the other tenderers or cancel the tender and re-issue it.

Notwithstanding anything contained herein, this Agreement 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 Tenderer) within five days of the date of such receipt or the conditional Letter of Acceptance notified the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature(s)

Name(s)

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

Schedule of Deviations

The extent of deviations from the Contract documents issued by the Employer prior to the Tender closing date is limited to those permitted in terms of the Contract Data and the Conditions of Contract.

A Tenderer's covering letter will not necessarily 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 cover letter must be referenced here if applicable, or it will not be valid as part of this submission).

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Contract documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.

Any change or addition to the Contract documents arising from the above agreements and recorded here shall also be incorporated in to the final Contract.

1 Subject

Details

.....
.....

2 Subject

Details

.....

3 Subject

Details

.....
.....

4 Subject

Details

.....
.....

5 Subject

Details

.....

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 Contract Data and addend 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 Contract 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

Document reference	Title	No of pages
C1.2	Contract Data	
	Part One – Data provided by the <i>Employer</i>	22
	Part Two – Data provided by the <i>Tenderer</i>	2
C1.3	Performance Guarantee	4
	Total number of pages	28

Part One - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		A: Priced contract with Bill of Quantities
	dispute resolution Option	
		W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X7: Delay damages
		X13: Performance Bond
		X15: Limitation of the Contractor's liability for his design to reasonable skill and Care.
		X16: Retention
		X17: Low Performance Damages
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	

10.1	The Employer is:	the Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the “IDD”), a juristic person reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997 (the “DBSA”);
	Address:	1258 Lever Road Headway Hill, Midrand Johannesburg
	Represented by:	Mr. Chuene Ramphele
	Tel No.	+27 11 313 3422
	Fax No.	+27 11 313 3086
10.1	The Project Manager is:	Abongile Ntunja
	Address:	1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	To be confirmed at contracting
	e-mail:	To be confirmed at contracting
10.1	The Supervisor is:	Tshepo Matebesi
	Address:	1258 Lever Road Headway Hill, Midrand Johannesburg
	Tel No.	To be confirmed at contracting
	Fax No.	NA
	e-mail:	To be confirmed at contracting
11.2(13)	The works are	Appointment of a Contractor to manufacture, deliver modular units (Alternative Building Technology) and commission for Cluster B (7) Schools in the Eastern Cape within the accelerated schools infrastructure delivery initiative (ASIDI) 47 programme on behalf of the Department of Basic Education (DBE).
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> (1) Late delivery affecting Purchaser's deliver obligation (2) Defective equipment or goods (3) Noncompliance with Health and Safety Regulations including instructions implementing COVID-19 directives

11.2(15)	The <i>Sites</i> are	CLUSTER B (1) Mnyaka Junior Secondary School (2) Ngweyesizwe Junior Primary School (3) Qhamile Junior Primary School (4) Vuyolwethu Junior Primary School (5) Jongintsizi Senior Primary School (6) Lampta Senior Primary School (7) Mayibongwe Junior Primary School	
11.2(16)	The Site Information is in	Part 4: Site Information	
11.2(19)	The Works Information is in	Part 3: Scope of Work and drawings to which it makes reference.	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	One (1) week	
2	The Contractor's main responsibilities	as per the Works Information	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	Six (6) months after appointment	
30.1	The <i>access dates</i> are	Within three days of the Starting date subject to the Project Manager's approval of a suitable and sufficiently documented health and safety plan	
30.3	The <i>key dates and conditions</i> to be met are	<i>condition to be met</i>	<i>key date</i>
		Site establishment	One (1) week from appointment
		Completion	Six (6) months after appointment
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 week of the Contract Date.	
31.2	The <i>starting date</i> is	One (1) week from date of appointment	

32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	2 weeks
4	Testing and Defects	
42.2	The <i>defects date</i> is	52 weeks after Sectional Completion
43.2	The <i>defect correction period</i> is	One (1) week
5	Payment	
50.1	The <i>assessment interval</i> is	20 th of each month
51.1	The <i>currency of this contract</i> is the	South African Rand
51.4	The <i>interest rate</i> is	the prime interest rate of the Standard Bank of South Africa Limited as amended from time to time
6	Compensation events	
60.1(13)	The place where weather is to be recorded is	On the various sites as part 4 namely: (1) Mnyaka Junior Secondary School (2) Ngweyesizwe Junior Primary School (3) Qhamile Junior Primary School (4) Vuyolwethu Junior Primary School (5) Jongintsizi Senior Primary School (6) Lampta Senior Primary School (7) Mayibongwe Junior Primary School
	The <i>weather measurements</i> to be recorded for each calendar month are:	<ol style="list-style-type: none"> 1. the cumulative rainfall (mm); 2. the number of days with rainfall of more than 10mm; 3. the number of days with minimum air temperature less than 0 degrees Celsius; 4. the number of days with snow lying at +2 hours GMT and these measurements 5. 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 site and which are available from the South African

	The <i>weather measurements</i> are supplied by	Contractor and verified with closest weather station to site.
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	N/A
84.1	The <i>Contractor</i> provides these additional insurances: guide: lateral support if applicable, professional indemnity if contractor does design, SASRIA or any other insurance identified but not in table at cl 84.2.	<ol style="list-style-type: none"> 1. The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA). 2. Public liability insurance to be affected by the contractor for the sum of R5 000 000.00 (Five Million Rand) per event with a deductible in an amount that the contractor deems appropriate. 3. Professional Indemnity for the sum of R 5 000 000.00 per claim in respect of Contractors design liability.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table:	None
84.1	The <i>Employer</i> provides these additional insurances:	Nil
84.2	If the <i>Employer</i> is to provide Plant and Materials:- the insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the Employer for an amount of	N/A
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> 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 <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than ZAR500 000.00 (Five hundred thousand Rands).
DATA FOR MAIN OPTION CLAUSES		
Option B	Option B: Priced Contract with <i>bill of quantities</i>	There is no reference to Contract Data in this Option B and terms in italics are identified elsewhere in this Contract Data.
W1	Data for Option W1	

W1.1	The <i>Adjudicator</i> is (Name)	to be appointed as needed, see W1.2(3) below
W1.2(3)	The <i>Adjudicator nominating body</i> is:	The Party, which raises the dispute, shall nominate three adjudicators from the panel of adjudicators published by the South African Institution of Civil Engineering and/or Association of Arbitrators Southern Africa depending upon the technical or legal issues and nature of the dispute, determine their hourly fees and confirm that these adjudicators are available to adjudicate the dispute in question. The other Party shall then elect, within seven (7) days, one of the three (3) nominated adjudicators to act as the adjudicator; failing which the chairperson for the time being of the Association of Arbitrators Southern Africa shall nominate an adjudicator on request from either party, having followed this process.
W1.4(2)	The <i>tribunal</i> is:	Arbitration, arbitrator to be appointed as required.
W1.4(5)	The <i>arbitration procedure</i> 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	South Africa, Johannesburg
	The person or organisation who will choose an arbitrator 1. if the Parties cannot agree a choice or 2. if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators Southern Africa or its successor body on application of either party.

DATA FOR SECONDARY OPTION CLAUSES

X5	Sectional Completion		
	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:		
		Section	Completion date
		Mnyaka PS	TBA
		Ngweyesizwe JPS	TBA
		Qhamile JPS	TBA

		<table><tr><td>Vuyolwethu JPS</td><td>TBA</td></tr><tr><td>Mayibongwe PS</td><td>TBA</td></tr><tr><td>Lampta SPS</td><td>TBA</td></tr><tr><td>Jongintsizi SPS</td><td>TBA</td></tr></table>	Vuyolwethu JPS	TBA	Mayibongwe PS	TBA	Lampta SPS	TBA	Jongintsizi SPS	TBA													
Vuyolwethu JPS	TBA																						
Mayibongwe PS	TBA																						
Lampta SPS	TBA																						
Jongintsizi SPS	TBA																						
X7	Delay damages																						
	Delay damages for Completion of the whole of the <i>works</i> are	<table><tr><th>section</th><th>description</th><th>amount</th></tr><tr><td>1</td><td>Mnyaka PS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr><tr><td>2</td><td>Ngweyesizwe JPS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr><tr><td>3</td><td>Qhamile JPS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr><tr><td>4</td><td>Vuyolwethu JPS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr><tr><td>5</td><td>Mayibongwe PS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr><tr><td>6</td><td>Lampta SPS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the</td></tr></table>	section	description	amount	1	Mnyaka PS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works	2	Ngweyesizwe JPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works	3	Qhamile JPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works	4	Vuyolwethu JPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works	5	Mayibongwe PS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works	6	Lampta SPS	The delay damages are a total of the Prices for the Section calculated in accordance with the
section	description	amount																					
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4	Vuyolwethu JPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works																					
5	Mayibongwe PS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works																					
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		<table> <tr> <td></td><td></td><td>guidelines from the national Department of Public Works</td></tr> <tr> <td>7</td><td>Jongintsize SPS</td><td>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works</td></tr> </table> <p>The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works. If the amount due for the delay damages reaches the limits stated in this Contract Data for Option X7 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.</p> <p>EXAMPLE</p> <p>Estimated contract value = R2 500 000 (excluding VAT)</p> <p>Contract period = 6 months</p> <p style="text-align: center;">=R2 500 000 X0.0575/100</p> <p style="text-align: center;">= R1437-50/day</p> <p>Therefore rounded off to the nearest R10-00 = R1440-00/day.</p>			guidelines from the national Department of Public Works	7	Jongintsize SPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works
		guidelines from the national Department of Public Works						
7	Jongintsize SPS	The delay damages are a total of the Prices for the Section calculated in accordance with the guidelines from the national Department of Public Works						
X13	Performance Bond							
	The amount of the performance bond is	being a Guarantee issued by a registered entity approved by the <i>Employer</i> – fixed at ten percent (10%) of the Prices at Contract Date, reducing to five percent (5%) of the Prices when the <i>Contractor</i> achieves Completion and expires 1 month after the <i>defects date</i> .						
X16	Retention							
	The <i>retention free</i> amount is	0%						
	The <i>retention percentage</i> is	5%						
X18	Limitation of liability							
	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (zero Rand)						

	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	cost for loss or damaged incurred by the <i>Employer</i>
	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	cost of the repair or reinstatement of property to original standard.
	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	total of the Prices as at the <i>start date</i>
	The <i>end of liability date</i> is	For latent defects 12 months after the Completion of the whole of the <i>works</i> .
X20	Key Performance Indicators (not used with Option 12)	Not Applicable
	The <i>incentive schedule</i> for Key Performance Indicators is in	NA
	A report of performance against each Key Performance Indicator is provided at intervals of	Every week
PART A – Additional Definitions		
Clause		Amendment

<p>11.2</p> <p>Identified and defined terms</p>	<p>Z1</p>	<p>Add the following new definition as clause 11.2(34):</p> <p>“Baseline Risk Assessment means the baseline risk assessment contemplated in regulation 5(1)(a) of the Construction Regulations.”</p> <p>Add the following new definition as clause 11.2(35):</p> <p>"Construction Agent means an “agent” as per the Construction Regulations being a competent person who acts as a representative for a client (“client” in this regard being the Employer); the agent contemplated herein: (i) manages the health and safety on a construction project for the client; (ii) is registered with a statutory body (being the South African Council for Project and Construction Management Professions or any other statutory body approved by the chief inspector); and (iii) is qualified to perform the functions required by the Construction Regulations 2014”;</p> <p>Add the following new definition as clause 11.2(36):</p> <p>“Construction Safety Officer means the construction safety officer as defined in the Construction Regulations.”</p> <p>Add the following new definition as clause 11.2(37):</p> <p>“Construction Regulations means the Construction Regulations as defined in clause 27.4.2 below”</p> <p>Add the following new definition as clause 11.2(38):</p> <p>“A Contractor Insolvency Event means and is considered to occur if:</p> <ol style="list-style-type: none"> 3. the Contractor commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of Sections 8 or 9(3)(a)(v) of the Insolvency Act 24 of 1936, as amended, or any equivalent legislation in any jurisdiction to which it is subject; 4. the Contractor begins negotiations or takes any other step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of its indebtedness or proposes or makes a general scheme, arrangement, assignment, or composition with or for the benefit of its creditors or a moratorium is proposed or agreed in respect of or affecting all or a material part of its indebtedness; 5. the Contractor makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally); 6. a court of competent jurisdiction grants an order winding-up the Contractor (whether provisionally or finally) or makes an order placing the Contractor under business rescue supervision; 7. an application or other legal process (including the filing of any document commencing judicial process) is issued seeking an order for the winding-up of the Contractor (whether provisionally or finally) or placing the Contractor under business rescue supervision, except for so long as such application or other legal process is being contested in good faith
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		<p>and by appropriate means or except for the bona fide purpose of reconstruction, amalgamation, reorganisation, merger or consolidation; or</p> <p>8. a resolution is passed by:</p> <ol style="list-style-type: none"> 1. the shareholders of the Contractor for the winding-up of the Contractor, whether by way of a members' or creditors' voluntary winding-up; or 2. the board of the Contractor for the Contractor to voluntarily begin business rescue proceedings and place himself under business rescue supervision." <p>Add the following new definition as clause 11.2(39):</p> <p>"Temporary Works is all temporary works of every kind required on site for the execution and Completion of the <i>works</i> and the remedying of any defects."</p> <p>Add the following new definition as clause 11.2(40):</p> <p>"Intellectual Property" means (a) any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods, trade secrets and confidential business information, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off; (b) applications for registration and the right to apply for registration for any of these rights; (c) all other intellectual property rights and similar forms of protection; existing anywhere in the world; and (d) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof,</p>
Clause		Amendment
12 Interpretation and the law	Z2	

12.5		Added the following clauses after clause 12.4: “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.”
12.6		Words denoting persons or parties shall include individuals and any organisation having legal capacity.
12.7		In this contract, except where the context requires otherwise: <ul style="list-style-type: none"> provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and; "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
12.8		<ul style="list-style-type: none"> The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the conditions of contract. Any word or expression defined in any clause in the Z clauses, unless the application of the word or expression is specifically limited to the clause in question, bears the meaning prescribed to the word or expression throughout the Z clauses.
12.9		Week means a continuous period of 7 days. <ul style="list-style-type: none"> If the day for payment of any amount due by the Employer or Contractor in terms of this contract should fall on a Saturday, Sunday or official public holiday in the Republic of South Africa, the relevant day of payment is/are the next ordinary business day in the Republic of South Africa.
12.10		<ul style="list-style-type: none"> Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
12.11		<ul style="list-style-type: none"> If any provision of this contract, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provision is not in any way affected or impaired thereby and the parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
12.12		<ul style="list-style-type: none"> Unless otherwise specifically recorded in this contract, termination of this contract for any cause does not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination. Similarly, the termination of this contract does not release a party from any obligation which, by its nature, is intended to survive such termination.
Using the Contractor's design		
	22.1	Delete core clause 22.1 in its entirety and replace it with the following clauses:

		Subject to each Party retaining title to its own Intellectual Property prior to the contract date, title to, copyright in and other Intellectual Property rights in any documents or other property created by the Contractor for or in connection with the Works vests in the Employer on creation and the Contractor hereby cedes and assigns all such rights to the Employer with effect from the date of creation vesting such Intellectual Property in the Employer.
	22.2	<ul style="list-style-type: none"> The Employer grants the Contractor a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.
	22.3	<ul style="list-style-type: none"> Unless otherwise agreed by the Parties, the Contractor grants to the Employer a non-exclusive, perpetual, irrevocable, royalty free license to use any of the Contractor's Intellectual Rights, obtained prior to this contract, in connection with the Works and this contract.
	22.4	<ul style="list-style-type: none"> All Intellectual Property created, enhanced or improvement arising from Providing the Works or from or in connection to the contract exclusively vests in the Employer.
	22.5	<ul style="list-style-type: none"> If the Employer is prevented from receiving the Works or any part thereof as a result of any actual or alleged infringement of Intellectual Property rights, the Contractor must, at its cost, take all reasonable steps necessary to procure for the Employer the right to receive the Works or the relevant part thereof for its intended purpose.
	22.6	<p>Modification or replacement of the Works</p> <ul style="list-style-type: none"> If the Contractor fails to procure the necessary rights in accordance with this clause within a reasonable time, the Employer may direct the Contractor, at the Contractor's cost, to promptly (i) amend the Works or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with Works that do not infringe Intellectual Property rights.
26 Subcontracting		
	26.1	<p>Core clause 26.1 to be amended as follows:</p> <ul style="list-style-type: none"> The Contractor does not subcontract the whole or any part of the works without the written consent of the Employer, which consent shall be the sole discretion of the Employer. If the Contractor subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the Contractor's. For the avoidance of doubt, the Contractor shall be responsible for the acts or defaults of any of its subcontractors, its agents or employees, as if they were the acts or defaults of the Contractor.
	26.3	<p>Core clause 26.3 to be amended as follows:</p> <ul style="list-style-type: none"> The Contractor submits the conditions of contract for each subcontract to the Project Manager and may redact all commercially sensitive information.
	26.4	<p>Add a new core clause 26.4 as follows:</p> <ul style="list-style-type: none"> The Contractor shall procure from the Subcontractor all consents required in order to ensure that all the rights and obligations the Contractor may have under the subcontracts can be ceded and delegated to the Employer.
	26.5	<p>Add a new core clause 26.5 as follows:</p>

		<ul style="list-style-type: none"> If the Contractor does not make payment of any amount due and payable by him to a Subcontractor ("the Subcontractor debt") and the Project Manager considers that the Subcontractor debt adversely impacts on the progress of the Works or the obligations of the Contractor under the contract, Project Manager requests evidence of payment to the Subcontractor. In the absence of such evidence, the Employer may (at its own discretion) pay the Subcontractor debt directly to the Subcontractor concerned in which event such payment is, for all purposes under the Contract, regarded as a payment made on behalf of the Contractor and at the request of and with the approval and consent of the Contractor, as a payment towards the Prices. Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.
	26.6	<p>Add a new core clause 26.6 as follows:</p> <ul style="list-style-type: none"> All adverse effects as a result of or arising from the Subcontractor debt does not result in a compensation event.
27 Health, safety and the environment		
27.4	Z3	<p>Clause 27.4 is deleted in its entirety and replaced with the following:</p> <p>Health and Safety specification</p>
27.4.1		The <i>Contractor</i> takes all reasonable steps and precautions to assess the Site, consider and receive all relevant information on the Site and health and safety related to the <i>works</i> , maintain the health and safety of persons in and about the execution of the <i>works</i> .
27.4.2		The <i>Contractor</i> acknowledges that the Occupational Health and Safety Act No. 85 of 1993 and the regulations promulgated therein ("the Act "); and the Construction Regulations 2014 promulgated under the Act ("the Construction Regulations "), Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Directions on Occupational Health and Safety in Certain workplaces will in all respects be applicable to this contract and the <i>works</i> .
27.4.3		The <i>Employer</i> appoints the Turnkey <i>Contractor</i> as the "Principal <i>Contractor</i> " (as defined and provided for under the Construction Regulations 2014) for the Site.
27.4.4		Accordingly, the <i>Contractor</i> is responsible for all duties of the "Principal <i>Contractor</i> " as defined and provided for under the Act and the Construction Regulations 2014 including but not limited to those obligations defined and provided for in Annexure A (COVID-19 Health and Safety Baseline Specification Amendment), Annexure B (Amended Baseline Risk Assessment – COVID-19 and Annexure C (DBSA SHEQ Policy) and all required Regulations and Standards applicable to the work of this contract
27.4.5		The <i>Contractor</i> shall appoint a registered Construction Health and Safety Consultant for the Works and all other site-specific appointments as per Legislation requirements.

27.4.5.1		The <i>Contractor</i> shall appoint a <i>Registered Competent Person</i> as per Legislation requirements.
27.4.6		<p>The <i>Contractor</i> confirms that it has received sufficient information about the Site and the works in order to:</p> <ol style="list-style-type: none"> 1. comply with the provisions of the Act and the Construction Regulations 2014, 2. comply with the provisions of this clause; 3. adhere to the <i>Employer's</i> health and safety baseline specification and SHEQ Policy as set out in Annexure A (COVID-19 Health and Safety Baseline Specification Amendment), Annexure B (Amended Baseline Risk Assessment – COVID-19 and Annexure C (DBSA SHEQ Policy); 4. be properly appointed in accordance with Section 37(2) of the Act as contemplated in clause 27.4.3; 5. and to prepare a site-specific Baseline Risk Assessment.
27.4.7		The <i>Contractor</i> acknowledges that the Project Manager acts as the <i>Employer's</i> "Implementing Agent" in respect of all obligations which the <i>Employer</i> has as "Client" in the Construction Regulations 2014 and the Act.
27.4.8		Without limitation, the <i>Contractor</i> :
27.4.8.1		notwithstanding any actions which the <i>Employer</i> may take, accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Act, all its regulations (including the Construction Regulations), Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Directions on Occupational Health and Safety in Certain workplaces and Annexures A, B and C. By concluding 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;
27.4.8.2		acknowledges and confirms that the Prices includes a sufficient amount for proper compliance with the Construction Regulations 2014, Section 27(2) of the Disaster Management Act, 2002 Regulations and COVID-19 Consolidated Directions on Occupational Health and Safety in Certain work places, all applicable health and safety laws, regulations, rules, guidelines, procedures and all obligations imposed by this contract and Annexures A, B and C and generally for the proper maintenance of health and safety in and about the execution of works;
27.4.8.3		undertakes, in and about the execution of the works, to comply with all applicable health and safety laws, regulations, rules, guidelines and procedures otherwise provided for under this contract and shall ensure that all sub-contractors, employees and Others under the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing; and

27.4.8.4		indemnifies the <i>Employer</i> against any loss, damage or claim suffered by the <i>Employer</i> due to a failure to comply with any provision of this clause 27.4 by the <i>Contractor</i> .
27.4.8.5		acknowledges and confirms that a registered Construction Health and Safety Officer will be appointed by the <i>Contractor</i> for the Project and that the Prices includes enough for the appointment of such
27.4.9		The <i>Contractor</i> and his designer shall accept full responsibility and liability to comply with the Act, the Construction Regulations and Annexures A, B and C for the design of the Temporary <i>Works</i> and those parts of the Permanent <i>Works</i> which the <i>Contractor</i> is responsible to design in terms of this contract;
27.4.10		The <i>Employer</i> retains a right to inspect, review, obtain copies of all documents regarding, attend and participate in all meetings regarding; all inquiries, audits and reports conducted under this contract including but not limited to those that are conducted in accordance with:
27.4.10.1		Annexure A (COVID-19 Health and Safety Baseline Specification Amendment), B (Amended Baseline Risk Assessment – COVID-19 and C (DBSA SHEQ Policy); of this contract; and
27.4.10.2		Section 31 and/or 32 of the Act, its regulations and the Construction Regulations following any incident involving the Turnkey <i>Contractor</i> and/or sub-contractor and/or their employees.
27.4.11		The <i>Contractor</i> shall notify the Project Manager and copy in the <i>Employer</i> in writing of all inquiries, audits, reports, investigations, complaints or criminal charges which may arise pursuant to <i>works</i> performed under this contract.
27.4.12		The <i>Employer</i> and the Project Manager shall, at all times during construction and for a period of 5 (five) years after Completion, have the right to access and inspect any part of the Site/ <i>works</i> and all documents, reports, designs, specifications whatsoever that are prepared pursuant to any clause of this contract.
27.4.13		The <i>Contractor</i> liaises with the <i>Employer</i> and the Project Manager regarding all issues related to this clause 27, and in particular, complies with all reasonable requests from the Project Manager to (i) attend any meetings and/or (ii) provides any documents, audits and reports; required by the <i>Employer</i> or Project Manager.
27.4.14		The <i>Contractor</i> complies with the Baseline Risk Assessment provided by the <i>Employer</i> , <i>Project Manager</i> or <i>Construction Health and Safety Consultant</i> . Notwithstanding the foregoing, the <i>Contractor</i> prepares its own Baseline Risk Assessment and complies with it where such Baseline Risk Assessment provides additional risks to those noted by the <i>Employer</i> or the <i>Project Manager</i> .
3 Time		

37.1 The Contractor's recovery plan	Z4	<p>Add the following new clause 37:</p> <p>"Where actual progress on Site is not in accordance with the most current programme or where the <i>Employer</i> or <i>Project Manager</i> is of the opinion, at any time during the execution of the <i>works</i>, that the <i>Contractor</i> will not achieve Completion on the date stated in the most current programme, the <i>Contractor</i> shall prepare a recovery plan within 14 days of receipt of an instruction from the <i>Employer</i> or <i>Project Manager</i> requesting such recovery plan detailing:</p> <ol style="list-style-type: none"> 1. the Contractor's plan to ensure that the works will achieve Completion on the date stated in the most current programme; 2. 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; 3. 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."
5 Payment		
51.2	Z5	<p>Amend this clause by deleting the second and the third sentences of the clauses and replace them with the following:</p> <p>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.</p>
	Z6	Add the following new clauses after clause 51.4.
51.5		Within one week of receiving a payment certificate from the <i>Project Manager</i> in terms of core clause 51.1, the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
51.6		If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> 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 <i>Contractor</i> (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 <i>Employer's</i> VAT number on each invoice the Contractor submits for payment.

6 Compensation Events		
61.3	Z7	<p>The second bullet point is deleted in its entirety.</p> <p>The last paragraph is deleted and substituted with the following:</p> <p><i>“In clarification, notwithstanding the Project Manager notifying the Contractor of a compensation event, if the Contractor does not notify a compensation event within the eight weeks of becoming aware of the event or ought reasonably to become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date.”</i></p>
9 Termination	Z8	
91.1	Z8.1	<p>Amend this clause by the addition of the following at the end of the second main bullet point, fourth sub-bullet point, after the words "against it":</p> <p><i>“or the Contractor commits a Contractor Insolvency Event (R5),”</i></p>
91.3	Z8.2	<p>Amend this clause by adding the following at the end of the clause:</p> <ol style="list-style-type: none"> 1. <i>“failed to effect any of the required insurances(R22);</i> 2. <i>failed to provide a satisfactory recovery plan pursuant to Clause 37 (The Contractor’s recovery plan) (R23); or</i> 3. <i>failed to comply with the provision of Clause Z3 (Broad Based Black Economic Empowerment) (R24).</i> <p>and for terminating for R22 to R24 the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply.”</p>
9.0		Insert the following new clause 9.4
9.4 Termination for convenience	Z8.3	<p>The <i>Employer</i> is entitled to terminate the Contract, at any time for the <i>Employer’s</i> convenience, by giving notice of such termination to the <i>Contractor</i>. The termination shall take effect 28 days after the later of the dates on which the <i>Contractor</i> receives this notice or the <i>Employer</i> returns the performance bond and all monies held in retention, unless there are outstanding calls/claims thereon in which event, and if applicable, the <i>Employer</i> returns the performance bond and all monies held in retention promptly after the last of the outstanding calls/claims have been met. The <i>Employer</i> does not terminate the Contract under this sub-clause in order to execute the <i>works</i> himself or to arrange for the <i>works</i> to be executed by another contractor. The same procedures on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply. The Contractor shall only be entitled to costs incurred at the date of termination</p>

Option Changes in the Law	X2: in the Z9	
X2.2	Z9.1	<p>Amend this clause by the addition of the following new clause:</p> <p>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.</p>
Option X7: Delay Damages	Z10	
X7.4	Z10.1	<p>Amend this clause by adding of the following new clause:</p> <p>“If the amount due for the Contractor’s payment of delay damages reaches the limits stated in this Contract Data for Option X7 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 in clause 90.2.”</p>
Option X13: Performance Bond	Z11	
X13.2		<p>The <i>Contractor</i> ensures that the performance bond is valid and enforceable until the <i>Contractor</i> has Provided the Works and remedied any and all <i>defects</i> therein. If the terms of the performance bond specifies its expiry date, then the Contractor extends the validity of the performance bond 28 days prior to such an expiry date, such that the performance bond lapses at the later of:</p> <ol style="list-style-type: none"> 1. the date of issue of the Defects Certificate; or 2. the date when the last <i>defect</i> notified has been remedied or accepted in accordance with this contract.
X13.3		<p>The <i>Employer</i> may make a claim under the performance bond, for amounts to which the <i>Employer</i> is entitled under the contract in the event of:</p> <ol style="list-style-type: none"> 1. failure by the <i>Contractor</i> to extend the validity of the performance bond as described in the preceding paragraph, in which event the <i>Employer</i> may claim the full amount of the performance bond,

		<p>2. failure by the <i>Contractor</i> to pay the <i>Employer</i> an amount due, as either agreed with the <i>Contractor</i> or assessed by the Project Manager (or otherwise determined) in accordance with the provisions of this contract, within 28 days after this agreement, assessment or determination,</p> <p>3. failure by the <i>Contractor</i> to remedy a default within 28 days after receiving the <i>Employer's</i> notice requiring the default to be remedied,</p> <p>4. the occurrence of any one of the following termination reasons: R1 to R15, R18 and R22 to R24.</p>
X13.4		The <i>Employer</i> indemnifies and hold the <i>Contractor</i> harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the performance bond to the extent to which the <i>Employer</i> is not entitled to make the claim.
X13.5		<p>Step Down</p> <p>5. The performance bond reduces by half its value on the date of issue of the Certificate of Completion.</p>
Z12		Cession delegation and assignment
Z12.1		The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .
Z12.2		Notwithstanding the above, the <i>Employer</i> may, on written notice to the <i>Contractor</i> , cede and delegate its rights and obligations under this contract to a Related Party or a Client of the <i>Employer</i> . For the purpose hereof:
Z12.2.1		a <i>Client</i> means the owner, funder and or sponsor of the project and/or programme managed in terms of the MOA/agreement between the Client and DBSA
Z12.2.2		a " <i>related party</i> " means any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the employer and includes any other "Organ of State" as defined in section 239 of the Constitution of the Republic of South Africa, 1996 and any entity or Organ of State for whom the employer carries out the works or acts as an implementing agent; and
Z12.2.3		" <i>Control</i> " means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity's assets), and/or the right or ability to direct or otherwise control the entity or the votes attaching to the majority of the entity's equity and "controlled" or "under common control" shall have a similar meaning.

Z13	Joint ventures
Z13.1	If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract.
Z13.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.
Z13.3	The <i>Contractor</i> 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 <i>Employer</i> having been given to the <i>Contractor</i> in writing.
Z14	Broad Based Black Economic Empowerment, Construction Industry Development Board grading and the valid and active Tax Compliance Status Pin issued by SARS.
Z14.1	The <i>Contractor</i> warrants that it will:
Z14.1.1	comply with all laws including the <i>Broad Based Black Economic Empowerment Act 53 of 2003</i> , its regulations and Codes of Good Practice; and the <i>Preferential Procurement Act 5 of 2000</i> and all its regulations;
Z14.1.2	maintain or improve (i) the BEE rating stated in its BEE certificate (ii) the contractor's Construction Industry Development Board grading, and (iii) its valid and active Tax Compliance Status Pin issued by SARS submitted at tender stage; and
Z14.1.3	not conduct any Fronting practices as defined in the Codes of Good Practice.
Z15	Change of Broad Based Black Economic Empowerment (B-BBEE) status
Z15.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.
Z15.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> .
Z15.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.

Z15.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> 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.
Z16	Ethics
Z16.1	Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , 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, including Fronting as referenced in Sub-Clause Z14.1.3, constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).
Z16.2	<p>The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> (or any member of the <i>Contractor</i> where the <i>Contractor</i> 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.</p> <p>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 <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from the an approved vendor data base of the <i>Employer</i> as a consequence of such practice.</p>
Z16.3	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.
Z17	Confidentiality
Z17.1	The <i>Contractor</i> 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 <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to Others in terms of clause 25.1, the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z17.2	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Project Manager</i> .

Z17.3	In the event that the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> 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 <i>Contractor</i> 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.
Z17.4	The taking of images (whether photographs, video footage or otherwise) of the <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Project Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z17.5	The <i>Contractor</i> ensures that all its subcontractors abide by the undertakings in this clause.
Z18	<i>Employer's limitation of liability</i>
Z18.2	The clause is added as the new clause X18.6 The <i>Contractor's</i> entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the <i>Employer's</i> liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.
Z19	<i>Employer's Step-in Rights and Additional Remedies</i>
Z19.1	In the event the <i>Contractor</i> and/or his subcontractor:
Z19.1.1	fails to carry out any obligation under the contract and the Works Information and fails to make good such failure and remedy it despite being requested to do so by the <i>Project Manager</i> in accordance with notices under Sub-Clause 16.1 (Early Warning) and/or Sub-Clause 13.1 (Communications), or
Z19.1.2	commits a breach of the Contract which reasonably places the project at risk of non-completion by the Completion Date, or non-Completion; or
Z19.1.3	commits a material breach of contract,
	the <i>Employer</i> may, without prejudice to its other rights in clause 9 (Termination), powers and remedies under the contract or in law, be entitled to step-in and take over the <i>works</i> , and on the account of the <i>Contractor</i> and at the <i>Contractor's</i> risk, to (i) make good the failure and remedy it, or complete the <i>works</i> himself, or (ii) call upon other contractors to make good the failure and remedy it or complete the <i>works</i> , or (iii) to call upon other contractors to partner with the <i>Contractor</i> to make good the failure and remedy it, or complete the <i>works</i> . Further, notwithstanding anything contained in this contract, where

	the <i>Employer</i> has “stepped-in” the <i>Contractor</i> shall remain responsible as if the <i>works</i> were executed by the <i>Contractor</i> for the <i>works</i> up to the Completion Date.
Z19.2	The <i>Contractor</i> shall co-operate with the <i>Employer</i> and facilitate and permit the use of all required <i>Contractor's</i> Equipment, Goods, information, materials and other matter (including <i>Contractor's</i> 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 <i>Contractor</i> under the Contract or otherwise for and/or in connection with the <i>works</i>) and shall generally do all reasonable things required by the <i>Project Manager</i> to achieve this end; provided that where the foregoing constitute proprietary information, the <i>Contractor's</i> obligation hereunder shall be limited to furnishing <i>works</i> specific information in a form capable of being disclosed to third parties or providing assistance to third parties without requiring the <i>Contractor</i> to disclose non <i>works</i> -specific source codes or other proprietary information.
Z19.3	Any information, materials and other matter made available by the <i>Contractor</i> under this Sub-Clause Z.10 shall be used solely and exclusively for the purpose of making good and remedying the <i>Contractor's</i> failure and shall thereafter be returned to the <i>Contractor</i> . Any such information, materials and other matter which is made available by the <i>Employer</i> to other persons as contemplated in this Sub-Clause Z.13 shall be made available strictly in accordance with the foregoing and subject to a confidentiality undertaking.
Z20	Employer Procured Materials and Goods
Z20.1	The <i>Employer</i> is entitled but not obliged to procure materials and goods on behalf of the <i>Contractor</i> . The <i>Contractor</i> may request that the <i>Employer</i> procures materials and goods on behalf of the <i>Contractor</i> .
Z20.2	Should the <i>Employer</i> exercise this right, or should the <i>Employer</i> accept the <i>Contractor's</i> request, the <i>Contractor</i> shall:
Z20.2.1	issue to the <i>Project Manager</i> a list of all materials and goods the <i>Contractor</i> requires;
Z20.2.2	state in the list considered above, the time within which such materials and goods must be provided;
Z20.2.3	take delivery of such materials and goods provided by the <i>Employer</i> ;
Z20.3	The <i>Contractor</i> shall be responsible for and takes the risk on all materials and goods after taking delivery of such materials and goods at Site and indemnifies the <i>Employer</i> against all losses or costs arising from any damage, loss or theft of such materials and goods.

Z20.4	The <i>Contractor</i> shall not be entitled to any extension of time and costs for the late delivery of any materials and goods to be procured by the <i>Employer</i> under the provision of this clause.
Z20.5	The direct cost of all materials and goods procured by the <i>Employer</i> on behalf of the <i>Contractor</i> in accordance with the provisions of this clause shall be deducted from each payment due to the <i>Contractor</i>
Z20.6	The <i>Contractor</i> acknowledges that all <i>Employer</i> supplied materials and goods remain the property of the <i>Employer</i> .
Z21	Contractor Undertaking re CIDB and Tax Certificates
Z21.1	The <i>Contractor</i> shall ensure that all certificates, clearances and the like, including specifically any certificates required to be obtained by the <i>Contractor</i> for purposes of the contract in terms of the Construction Industry Development Board and the Value Added Tax Act, no 89 of 1991, remain in full force and effect up until the Completion Date.
Z21.2	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of the expiry of any requisite certificate may constitute a reason for termination. If the <i>Employer</i> 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. In addition to the <i>Employer's</i> right to terminate, should any requisite certificate that the <i>Contractor</i> is required to obtain expire or be null and void for any reason whatsoever, the <i>Employer</i> may withhold any payments due to the <i>Contractor</i> until such time as the <i>Contractor</i> provides the <i>Employer</i> and / or <i>Project Manager</i> with a valid and / or updated certificate, as the case may be.
Z22	RIGHT TO AUDIT
Z22.1	The <i>Employer</i> shall be entitled to, within 2 (two) Business Days of the giving of notice to the <i>Contractor</i> to such effect, conduct an audit of all relevant books, records, systems, processes, procedures and documents of the <i>Contractor</i> in order to verify compliance by the <i>Contractor</i> with its obligations in terms of this Contract and/or to assess any entitlement or claimed entitlement of the <i>Contractor</i> under this Contract or to investigate any allegations with regard to possible criminal activities or breach of DBSA policies or procedures.
Z22.2	The <i>Contractor</i> shall co-operate and render all assistance requested by the <i>Employer</i> relating to such audit. In addition, the <i>Contractor</i> shall provide the <i>Employer</i> with access to all such books, records, systems, data and documents of the <i>Contractor</i> that are relevant to this Contract, the <i>Contractor's</i> obligations under this Contract and/or any entitlement or claimed entitlement of the <i>Contractor</i> under this Contract and to any premises, shareholders, partners, members, subcontractors and Personnel of the <i>Contractor</i> for the purposes of conducting such audit. The <i>Employer</i> shall have the right to take copies of any records and information the <i>Employer</i> reasonably require to assist in connection with any such audit.

Z22.3	The Contractor shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with providing the Works and all matters related thereto (whether contained in documents or in electronic format) for the period of this Contract, and for a period of at least 5 (five) years after termination or completion of all of the Works (as the case may be).
Z22.4	The Contractor shall ensure that the rights in this clause 18 also apply to any subcontractors and that the Employer be afforded the same auditing rights by the subcontractors.
Z22.5	The Employer shall keep all information obtained in terms of this clause 18 confidential and not disclose it to any third party. In the event that the Employer is, at any time, required by law to disclose any such information which is required to be kept confidential, the Employer, to the extent permitted by law prior to disclosure, notifies the Contractor 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 Employer 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.

C1.2 CONTRACT DATA (Continued)

Part two – Data provided by the *Contractor*

Notes to a 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 contractor is required to complete. An example of the completed Data is provided on pages 152 to 154 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.

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

Statements given in
all contracts

1. The *Contractor* is

Name

Address

.....

2. The *direct fee percentage* is.....N/A.....
.....%.

3. The *subcontracted fee percentage* is..... N/A.....
.....%.

4. The *working areas* are the Site and N/A.....
.....

5. The key people are

(1) Name

Job

Responsibilities

.....

Qualifications

Experience

.....

(2) Name

Job

Responsibilities

.....

Qualifications

.....

Experience

.....

.....

6. The following matters will be included in the Risk Register (note as above with data by Employer this is risks identified at tender stage)

.....

.....

.....

.....

Optional statements **If the *Contractor* is to provide Works Information for his design**

7. The Works Information for the *Contractor's* design is in TBC

.....

.....

.....

.....

.....

.....

If a programme is to be identified in the Contract Data

8. The programme identified in the Contract Data is.....

....

If the *Contractor* is to decide the *completion date* for the whole of the works

9. The *completion date* for the whole of the *works* is.
.....

10. The *bill of quantities* is
.....

11. The tendered total of the Prices is
.....

Data for the Shorter
Schedule of Cost

Components

12. The percentage for people overheads is
..... %.

13. The published list of Equipment is the last edition of the
list published by

.....

14. The percentage for adjustment for Equipment in the
published list is

..... % (state plus or minus).

15. The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....
.....
.....

16. The hourly rates for Defined Cost of design outside the
Working Areas are

category of employee	hourly rate
.....
.....
.....
.....

17. The percentage for design overheads is
..... %.

18. The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are

.....

.....

.....

.....

C1.3 PERFORMANCE BOND

Pro-Forma NEC3 ECC Variable Performance Bond for Works and Maintenance – 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]*

In this Guarantee:

the following words and expressions have the following meanings:

“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.**

“Guarantor’s Address” - means [●]; *[Drafting Note: Guarantor’s physical address to be inserted]*

“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]*

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

“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;

“Expiry Date” – means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 0;

“this Guarantee” - means this Performance Bond;

“Guaranteed Sum” - means the sum of [● - figure] ([● - words]) as reduced from time to time as provided for in paragraph 0 below; *[Drafting Note: Maximum aggregate Guarantee amount to be inserted not exceeding 10% of the contract sum]*

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

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;

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.

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 0 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.

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

Maximum Guaranteed Sum (not exceeding 10% of the contract sum) 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.

Reducing the Guaranteed Sum (not exceeding 5.0% of the contract sum) 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.

Reducing the Guaranteed Sum (not exceeding 0% of the contract sum) 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 0 to 0 shall apply in respect of any claim received by the Guarantor during the Security validity.

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

- confirm the “Guaranteed Sum” at the time of the demand;
- state the amount claimed (“the Demand Amount”); and
- state that the Demand Amount is payable to *Employer* in the circumstances contemplated in the Contract:
- in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:
- 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 □ 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;

- be accompanied by a copy of a preceding first written demand notice issued by *Employer* to the *Contractor* 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 □;
- and
- 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;
- 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:
- 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
- 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.

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

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

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

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

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.

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.

The Guarantor's obligations in terms of this Guarantee:

- shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
- 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*.

This Guarantee:

- shall expire on the Expiry Date until which time it is irrevocable;
- is, save as provided for in 0 above, personal to *Employer* and is neither negotiable nor transferable;
- shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

- 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
- 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.

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

(Printed Name

of Witness) _____

of Witness) _____

Guarantor's seal or stamp

PART 2: PRICING DATA

NEC 3 Engineering and Construction Contract Option B: Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Assumptions: Option B	
C2.2	Pricing Instructions	
C2.3	The <i>Bill of Quantities</i>	
C2.4	Amendments, Qualifications and Alternatives By Contractor	
	Total number of pages	

C2.1 PRICING ASSUMPTIONS: OPTION B

1 How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option B states:

Identified and defined terms	11 11.2	<p>(21) The Bill of Quantities is the bill of quantities as changed in accordance with this contract to accommodate the implemented compensation events and for accepted quotation events for acceleration.</p> <p>(22) Defined Cost is the cost of the components in the Shorter Schedule of the Cost components whether work is subcontracted or not excluding the cost of preparing quotation for compensation events.</p> <p>(28) The Price for Work Done to Date is the total of</p> <ul style="list-style-type: none"> the quantity of the work which the Contractor has completed for each item in the Bill of Quantities multiplied by the rate and a proportion for each lump sum which is the proportion of the work covered by the item the Contractor has completed. <p>Completed work is the work without Defects which would either delay or be covered by immediately following work.</p> <p>(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.</p>
Acceleration	36 36.3	When the Project Manager accepts a quotation for an acceleration, in which the initial delay arising from the Contractor's fault, then he does not change the Prices, the Completion Date and the Key Dates accordingly but accepts the acceleration at the Contractors cost. The Contactor will revise the programme for the Project Manager acceptance.
The Bill of Quantities	55 55.1	Information in the Bill of Quantities is not Works Information or Site Information.
Compensation events	60 60.4	<p>A difference between the final total quantity of work done and the quantity stated for an item in the Bill of Quantities is a compensation event if</p> <ul style="list-style-type: none"> the difference does not result from a change to the Works Information the difference causes the defined cost per unit of quantity to change and the rate in the Bill of Quantities for the item multiplied by the final total quantity of work done is more than 0.5% of the total of the Prices at the Contract Date. <p>If the Defined Cost per unit of quantity is reduced, the affected rate is reduced.</p>
	60.5	A difference between the final total quantity of work done and the quantity for an item stated in the Bill of Quantities which delays Completion, or the meeting of the Condition stated for a Key Date is a compensation event.
	60.6	The Project Manager corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the method of measurement or are due to ambiguities or inconsistencies. Each such correction is a compensation event which may lead to reduced Prices.

	60.7	In assessing a compensation event which results from a correction of an inconsistency between the Bill of Quantities and another document, the Contractor is assumed to have taken the Bill of Quantities as correct.
Assessing compensation events	63 63.10	<p>If the effect of a compensation event is to reduce the total Defined Cost and the event is</p> <ul style="list-style-type: none"> • a change to the Works Information or • a correction of an assumption stated by the Project Manager for assessing an earlier compensation event <p>the Prices are reduced.</p>
	63.13	<p>Assessments for changed Prices for compensation events are in the form of changes to the Bill of Quantities.</p> <ul style="list-style-type: none"> • For the whole or part of a compensation event for work not yet done and for which there is an item in the Bill of Quantities, the changes are a <ul style="list-style-type: none"> ○ A change rate, ○ A changed quantity or ○ A changed lump sum. • For the whole or a part of a compensation event for work not yet done and for which there is no item in the Bill of Quantities, the change is a new priced item which unless the Project Manager and the Contractor agree otherwise, is compiled in accordance with the method of measurement • For the whole or a part of a compensation event for work already done, the change is a new lump sum item. <p>If the Project Manager and the Contractor agree, rates and lump sums may be used to assess a compensation event.</p>
Implementing compensation events	65 65.4	The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.

C2.2 PRICING INSTRUCTIONS

- 1 The Bill of Quantities to be priced is to be provided by the Employer.
- 2 The agreement is based on the NEC3 suite of documents, Option B. The additions, deletions and alterations to the NEC3 document as well as the contract specific variables are as stated in the Contract Data.
- 3 Preliminaries requirements are based on the various parts of SANS 1921, Construction and management requirements for works contracts. The additions, deletions and alterations to the various parts of SANS 1921 as well as the contract specific variables are as stated in the Specification Data in the Scope of Work.
- 4 It will be assumed that prices included in the Bill of Quantities (if any), are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published 28 days before the closing date for tenders. (Refer to www.stanza.org.za or www.iso.org for information on standards).
5. The Contractor is required to make designs for the works. The Contractor will assume responsibility for design for suitability for purpose for the portion of the works which he has designed.
6. 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.
7. The Bill of Quantities is not intended for the ordering of materials. Any ordering of materials, based on the Bill of Quantities, is at the Contractor's risk.
8. Bill of Quantities and pricing to be submitted should be at a detailed level.
9. No variations will be considered for any omissions by the contractor.
10. The contract price shall remain fixed for the duration of the contract and will not change with any fluctuations in foreign exchange and CPAP.

PART 3: SCOPE OF WORK

NEC 3 Engineering and Construction Contract Option B: Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
	This cover page	1
C3.1	Employers Works Information	3
C3.2	Contractors Works Information	6
C3.3	Particular Specifications	1
C3.4	Drawings	4
	Total number of pages	35

C3.1 EMPLOYERS WORKS INFORMATION

The following standards and any other relevant documentation pertaining thereto must be studied and all principles in this regard must be applied to all procurement documentation, practices and procedures.

Area	Reference
National Building Regulations (NRB)	SANS 10400 (SABS 0400)
Design and Construction of Houses	Generic Specification GFSH – 11
Lightning Protection	SANS 10200:1985.
Lightning Protection	SANS 61024 – Protection of structures against lightning.
Lightning Protection	SANS 62305 – Earthing and Lightning Protection.
Lightning Protection	SANS 10313:2008 Protection against lightning – Physical damage to structures and life Hazard.
Earthing and Grounding	SANS 10292:2001
Control and Monitoring System	R842: Government Gazette, 8 August 2008
Quality	SANS 9001/150 9001 – Quality Management Standard
Quality	Standard for Quality Management Systems (ISO) 9001:2015
Safety	Occupational Health and Safety Act, Act Nr 85 of 1993 including the following Regulations:.
Safety	Pressure Equipment Regulations, 2009
Safety	Major Hazard Installation Regulations, 2001
SANS 347:2012	Categorization and conformity assessment criteria for all pressure equipment.
Health	National Norms and Standards relating to Environmental Health in terms of National Health Act, 2003 (Act Nr 61 of 2003)
General	Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017.

C3.2 CONTRACTORS WORKS INFORMATION

1 DESCRIPTION OF THE WORKS

1.1 Employer's objectives

The Employer's objectives are to deliver Modular Units (Alternative Building Technology) to selected Accelerated Schools Infrastructure Delivery Initiative (ASIDI) schools in the Eastern Cape. The Employer's objectives also include handing over and commissioning of the facilities before they can be utilised by the Department of Basic Education

1.2 Overview of the works

The Department of Basic Education (DBE) has an objective to provide sustainable infrastructure that meets the demands, improves accessibility and improves the quality of life of the people of South Africa

1.3 Extent of the works

The Works to be carried out by the Contractor under this contract is outlined in the table below. The location will be within the identified District Municipality (Refer to the drawings for detailed specifications of work to be done):

ASIDI 47 SCHOOLS ADDITIONAL 12 PROJECTS

Cluster B

No	Project Name	Cluster	Latitude	Longitude	EMIS #	New Prefabricated Structures
1	Mnyaka PS	Centane	-32.5797194	28.42828794	200300323	3 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit
2	Ngweyesizwe JPS	Centane	-32.4503489	28.35236308	200300450	2 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit
3	Qhamile JPS	Centane	-32.45692	28.15974	200300545	2 x Single Classroom 1 x Multi-purpose classroom 1 x Grade R 1 x Admin

4	Vuyolwethu JPS	Centane	-32.50681	28.37947	200300725	2 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit
5	Mayibongwe PS	Tsomo	-32.2327968	27.89306639	200300303	2 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit
6	Lampta SPS	Tsomo	-32.1547147	27.81345699	200300204	1 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit
7	Jongintsizi SPS	Tsomo	-32.1989427	27.76090971	200300770	2 x Single Classroom 1 x Multi-purpose Classroom 1 x Grade R 1 x Admin Unit

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 Provincial Department of Roads & Transport (for provincial roads) and the District Municipality Roads & Storm Water 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 implemented within a rural 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 locals.

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 implemented are located in the area of jurisdiction of the various District Municipalities as provided.

1.5 Temporary works

As the Works are to be implemented within a rural 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 locals.

1.6 Occupational Health And Safety

The Contractor needs to comply with the following legal requirements:

- Occupational Health and Safety Act, 85 of 1993 and the Construction Regulations, 2014;
- 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;
- Annexure B - DBSA Baseline Risk Assessment;
- Annexure C - Safety, Health, Environment and Quality Policy. Amended COVID-19 Health and Safety Baseline Specifications and Baseline Risk Assessment.

2. DRAWINGS

N/A

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, Seventy 70% 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 RFP016/2019~~

~~3.2.2 To the extent that the subcontracting of the categories referred to in 3.2.1 above is less than Seventy 70% 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 Eastern Cape Province (ECP) 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 ECP-based. The management Contractors shall ensure that part of the 70% allocated to the sub-contractors, minimum threshold of 30% of that works are allocated to the enterprises owned by black women and minimum threshold of 30% 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 Contractors 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

Valid and current Agrément Certificate for the supply of Alternative Building Technology modular units specifically appropriate for Educational / Places of Instruction occupancy

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

Not Applicable

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:

SANS 1921-1, Construction and management requirements for works contracts – Part 1: General engineering and construction works	
Clause	Specification data
Essential data	
4.1.7	The Contractor is responsible for providing shop drawings, product information and necessary calculations.
4.2.1	The responsibility strategy assigned to the Contractor for the works is A.
4.2.2	The structural engineer is: TBC
4.3.1	The planning, programme and method statements are to comply with the following: <ul style="list-style-type: none"> 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	<p>The office accommodation, equipment, accommodation for site meetings and other facilities for use by the employer and his agents are:</p> <ul style="list-style-type: none"> 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 employers representatives: <ul style="list-style-type: none"> 15 Hardhats for employers 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	<p>The requirements for the provision and erection of separate sign boards for consultants and subcontractors are:</p> <ul style="list-style-type: none"> 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 over head 3) Sewer Network 4) Municipal roads

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 or 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 contract 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

Service	Option		
	A Contractor responsibility	B Employer responsibility	C
Water	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.	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.	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.
Electricity	The Contractor is to provide, and remove and make good upon completion, all the	The Contractor shall make, and upon completion remove, all the necessary electrical connections	The Contractor shall make, and upon completion remove, all the necessary connections and

	necessary temporary electrical connections and installations and purchase electricity from the local authority / ESKOM for the works at his own cost.	to the Employer's electrical supply at designated points and make use of electricity free of charge for construction purposes only.	meters to the Employer's electrical supply and be responsible for costs associated with all electricity consumed.
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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.

Clause	Specification Data
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Essential Data:

5.1	The depth of trenches which are to be excavated by hand is 1,5 metres.
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Additional clauses:

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

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

4.2.1(a)	<p>A qualified Contractor is a Contractor that is one that is accredited or provisionally accredited training Contractor in the HIV/AIDS field.</p> <p>A list of accredited Contractors 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:</p>
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	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.

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 Supply Contract. 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.
- e) The Contractor should allow for a R3800 stipend, data per month, a laptop and handling fee per learner.

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 there from 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.

C3.3 PARTICULAR SPECIFICATIONS

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

PARTICULAR SPECIFICATION	PAGE NO.
POHS: HEALTH AND SAFETY BASELINE SPECIFICATIONS & AMENDMENTS FOR COVID-19	Annexure A
B/RA: BASELINE RISK ASSESSMENT & AMENDMENTS FOR COVID-19	Annexure B
SHEQ : DBSA SHEQ POLICY	Annexure C

~~C3.4~~ DRAWINGS

~~3.4.1~~ TENDER DRAWINGS

Note: ~~No Drawings available, project is Turnkey.~~

PART 4: SITE INFORMATION

Document reference	Title	No of pages
C4.1	This cover page	1
	<i>Locality Plan</i>	1
	Total number of pages	2

C4.1 LOCALITY PLAN

