



## VOLUME 3 OF 3

## THE CONTRACT

**NEC 3 Engineering and Construction, Engineering and Construction Contract, April 2013 with Option A: Priced Contract with Activity Schedule(including amendments).**

**TENDER NO. RFP301/2023**

## **APPOINTMENT OF A TURNKEY CONTRACTOR FOR THE DESIGN AND CONSTRUCTION OF THE ROOIWAL WASTE-WATER TREATMENT WORKS**



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### Notes:

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

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

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

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## THE CONTRACT

**C1 : AGREEMENT AND CONTRACT DATA**

**C2 : PRICING DATA**

**C3 : WORKS INFORMATION**

**C4 : SITE INFORMATION**

## PART 1: AGREEMENT AND CONTRACT DATA

1. **Contract 1 – APPOINTMENT OF A TURNKEY CONTRACTOR FOR THE DESIGN AND CONSTRUCTION OF THE ROOIWAL WASTE-WATER TREATMENT WORKS**
2. **NEC 3 Engineering and Construction Contract Option A: Priced Contract with Activity Schedules 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: **RFP301/2023- APPOINTMENT OF A TURNKEY CONTRACTOR FOR THE DESIGN AND CONSTRUCTION OF THE ROOIWAL WASTE-WATER TREATMENT WORKS.**

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

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

The offered total of the Prices exclusive of VAT is	R
Sub total	R
Value Added Tax @ <b>15%</b> is	R
The offered total of the amount due inclusive of VAT is <sup>1</sup>	R
(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 *Contractor* 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 service provider the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1: Agreements and Contract Data, (which includes this 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 Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The tenderer shall 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 Contractor) within five days of the date of such receipt or the conditional Letter of Acceptance notifies 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

Name of witness .....

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

## Schedule of Deviations

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

A Tenderer's covering letter will not 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 other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.

Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated in to the final 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 Tender 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 Tender documents and the receipt by the Tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.

**For the Tenderer:**

Signature(s) .....

Name(s) .....

Capacity .....

Name of Tenderer .....

Address of Tenderer .....

.....

Name of witness .....

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

**For the Employer:**

Signature(s) .....

Name(s) .....

Capacity .....

Name of Employer: **Development Bank of Southern Africa Limited**

Address of Employer 1258 Lever Road, Headway Hill, Midrand, Gauteng

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>Contractor</i>	2
C1.3	Performance Guarantee	4
	Total number of pages	28

## Part One - Data provided by the *Employer*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row. Where the following symbol is used “**[●]**” - data is required to be inserted relevant to the specific option selected.

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

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 activity schedule
	dispute resolution Option	
		W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X5: Sectional Completion
		X7: Delay Damages
		X13: Performance Bond
		X14: Advanced payment to the <i>Contractor</i>
		X15: Limitation of the Contractor's liability for his design to reasonable skill and

		<b>Care.</b>
		<b>X16: Retention</b>
		<b>X17: Low Performance Damages</b>
		<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	<b>The Employer is:</b>	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”);
	<b>Address:</b>	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	<b>Represented by:</b>	<b>To be indicated at contracting</b>
	<b>Tel No.</b>	<b>To be indicated at contracting</b>
	<b>Fax No.</b>	<b>To be indicated at contracting</b>
10.1	<b>The Project Manager is:</b>	<b>To be indicated at contracting</b>
	<b>Address:</b>	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg
	<b>Tel No.</b>	<b>To be indicated at contracting</b>
	<b>e-mail:</b>	<b>To be indicated at contracting</b>
10.1	<b>The Supervisor is:</b>	<b>To be indicated at contracting</b>
	<b>Address:</b>	Registered office at 1258 Lever Road Headway Hill, Midrand Johannesburg

	<b>Tel No.</b>	<b>To be indicated at contracting</b>
	<b>Fax No.</b>	<b>To be indicated at contracting</b>
	<b>e-mail:</b>	<b>To be indicated at contracting</b>
11.2(14)	The following matters will be included in the Risk Register	<b>(i) Compliance with tender requirements</b> <b>(ii) Personnel Clearance and Authorised Access to Site</b> <b>(iii) Work performance and quality of targeted enterprises subcontracted by the Contractor</b> <b>(iv) Community liaison;</b> <b>(v) Matters notified as early warnings; and</b> <b>(vi) Decisions resulting from risk reduction meetings.</b>
11.2(15)	The <i>boundaries of the site</i> are	<b>As per the locations indicated.</b>
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 all documents 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	3 days
<b>2</b>	<b>The Contractor's main responsibilities</b>	Turn-key as per the scope of work
<b>3</b>	<b>Time</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	The client has a fixed project schedule of 6 months excluding the construction of the pedestrian bridge.
30.1	The <i>access dates</i> are	<b>Part of the site</b> <b>Date</b> <b>[•]TBC</b> <b>[•]</b>

30.3	The <i>key dates</i> and <i>conditions</i> to be met are	<i>condition</i> to be met	<i>key date</i>
		[•]Site establishment	[•]TBC
		[•]Completion	[•]TBC
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	within [seven (7)] days from the date the construction work permit is issued in terms of the Construction Regulations 2014	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	1 week	
4	<b>Testing and Defects</b>		
42.2	The <i>defects date</i> is	52 weeks after [Completion of the whole of the works]	
43.2	The <i>defect correction period</i> is	5 days	
5	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	20 <sup>th</sup> of each month	
51.1	The <i>currency of this contract</i> is the	South African Rand	
51.2	The period within which payments are made is	4 weeks from receipt of tax invoice	
51.4	The <i>interest rate</i> is	zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands.	
6	<b>Compensation events</b>		
60.1(13)	The place where weather is to be recorded is	At the site working area	

	The <i>weather measurements</i> to be recorded for each calendar month are:	<ul style="list-style-type: none"> <li>the cumulative rainfall (mm);</li> <li>the number of days with rainfall of more than 10mm;</li> <li>the number of days with minimum air temperature less than 0 degrees Celsius;</li> <li>the number of days with snow lying at <b>+2</b> hours GMT;</li> <li>and these measurements:</li> </ul>
	The <i>weather measurements</i> are supplied by	<b>Contractor and verified with closest weather station to site.</b>
	The weather data are the records of the past <i>weather measurements</i> for each calendar month which were recorded at	<b>On the various sites as part 4</b>
60.1(13)	<b>Where no recorded data are available:-</b> assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	<ul style="list-style-type: none"> <li>the cumulative rainfall (mm);</li> <li>the number of days with rainfall of more than 10mm;</li> <li>the number of days with minimum air temperature less than 0 degrees Celsius;</li> <li>the number of days with snow lying at <b>+2</b> hours GMT;</li> <li>and these measurements:</li> </ul>
60.1(19)	An event which stops the Contractor completing the <i>works</i> by the date shown on the Accepted Programme	The Contract to allow for three (3) days interruption in his programme due to the national/provincial elections in 2023
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>N/A</b>
84.1	The <i>Contractor</i> provides these additional insurances: <b>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.</b>	<ol style="list-style-type: none"> <li>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).</li> <li>Public liability insurance to be effected by the contractor for the sum of <b>R 5 000 000.00 (Five Million Rand) per event</b> with a deductible in an amount that the contractor deems appropriate.</li> <li>Professional Indemnity for the sum of R 5 000 000.00 (five million rands) per claim in respect of Contractors design liability.</li> </ol>

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	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	<b>R10 million with cross liability and no limit on number of events or claims</b>
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	<b>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 R500 000 (Five hundred thousand Rands).</b>

**DATA FOR MAIN OPTION CLAUSES**

<b>Option B</b>	<b>Option B: Priced Contract with <i>Activity Schedule</i></b>	There is no reference to Contract Data in this Option B and terms in italics are identified elsewhere in this Contract Data.
<b>W1</b>	<b>Data for Option W1</b>	
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 select 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 select, 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.

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  - if the Parties cannot agree a choice or - 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**

<b>X2</b>	<b>Changes in the law</b>	
		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
<b>X7</b>	<b>Delay damages</b>	
	Delay damages for Completion of the whole of the <i>works</i> are	<p>The penalty per calendar day shall be calculated as per the current formula of penalty calculation by the Department of Public works up to a maximum of 10% of the contract value. Thereafter, the employer shall have a right during the identified delay period to intervene and accelerate the work or appoint a third party to assist or complete the works to reach practical completion at the planned period. The cost of the appointed third party work shall be borne by the contractor.</p> <p>EXAMPLE</p> <p>Estimated contract value = R2 500 000 (excluding VAT)</p> <p>Contract period = 6 months</p> <p>=R2 500 000 X0.0575/100</p>



		<div>= R1437-50/day</div> <div>Therefore rounded off to the nearest R10-00 = R1440-00/day.</div> <div>To a maximum of 10% of the total of prices. The Employer terminates this contract upon the contractor reaching the maximum penalty of 10%.</div>	
X13	Performance Bond		
	The amount of the performance bond is	being an on-demand <b>Guarantee</b> issued by a registered entity approved by the <i>Employer</i> – fixed at ten percent (10%) of the contract Price at Contract Date, reducing to five percent (5%) of the contract Price when the <i>Contractor</i> achieves Completion and expires 1 month after the <i>defects date</i> .	
X14	Advance payment to the <i>Contractor</i>		
	The value and the applicability of the Advance payment to the <i>Contractor</i> will be at the sole discretion of the <i>Employer</i>		
	The amount of the advanced payment is	TBC	
	The <i>Contractor</i> repays the instalments in assessments starting not less than	_____ [TBC] weeks after the Contract Date.	
	The instalments are	[TBC] %	
	An advance payment bond	is required.	
X16	Retention		
	The <i>retention free</i> amount is	0%	
	The <i>retention percentage</i> is	5%	
X17	Low performance damages		
	The amounts for low performance damages are	amount	performance level for

<b>X18</b>	<b>Limitation of liability</b>		
	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>Nil</b>	
	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:	<b>The amount of the insurance as stated in the data for clause 84.2 above, R10m per event.</b>	
	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	<b>cost of the repair or reinstatement of property to original standard.</b>	
	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:	<b>total of the Prices as at the <i>start date</i> as adjusted in terms of X1 if X1 applies to the contract</b>	
	The <i>end of liability date</i> is	<b>For latent defects 52 weeks</b> after the Completion of the whole of the <i>works</i> .	
<b>X20</b>	<b>Key Performance Indicators (not used with Option 12)</b>	<b>Not Applicable</b>	
	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>NA</b>	
	A report of performance against each Key Performance Indicator is provided at intervals of	<b>N/A</b>	

#### PART A – Additional Definitions

Clause	Amendment
<b>11.2</b> <b>Identified and defined terms</b>	<p>Add the following new definition as clause 11.2(32):</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(33):</p>

"Construction Agent means an "agent" as per the Construction Regulations which means 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";

Add the following new definition as clause 11.2(34):

"Construction Safety Officer means the construction safety officer as defined in the Construction Regulations."

Add the following new definition as clause 11.2(35):

"Construction Regulations means the Construction Regulations as defined in clause 27.4.2 below"

Add the following new definition as clause 11.2(36):

"A Contractor Insolvency Event means and is considered to occur if:

- 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;
- 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;
- the Contractor makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally);
- 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;
- 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 and by appropriate means or except for the bona fide purpose of reconstruction, amalgamation, reorganisation, merger or consolidation; or

- a resolution is passed by:
  - the shareholders of the Contractor for the winding-up of the Contractor, whether by way of a members' or creditors' voluntary winding-up; or
  - the board of the Contractor for the Contractor to voluntarily begin business rescue proceedings and place himself under business rescue supervision."

Add the following new definition as clause 11.2(37):

"Temporary Works is all temporary works of every kind required on site for the execution and Completion of the *works* and the remedying of any defects."

Add the following new definition as clause 11.2(38):

"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 reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof,

## **PART B - Amendments and additions to Existing Core and Optional Clauses**

<b>Clause</b>	<b>Amendment</b>
<b>12</b> <b>Interpretation and the law</b>	
<b>12.5</b>	<p>Added the following clauses after clause 12.4</p> <p>"Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Project Manager</i>, the <i>Supervisor</i>, or the <i>Adjudicator</i> does not constitute a waiver</p>

	of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.”
<b>12.6</b>	Words denoting persons or parties shall include individuals and any organisation having legal capacity.
<b>12.7</b>	In this contract, except where the context requires otherwise: <ul style="list-style-type: none"> <li>provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and;</li> </ul> "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
<b>12.8</b>	<ul style="list-style-type: none"> <li>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.</li> </ul> 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.
<b>12.9</b>	Week means a continuous period of 7 days. 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.
<b>12.10</b>	Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
<b>12.11</b>	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.
<b>12.12</b>	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.
<b>Using the Contractor's design</b>	
<b>22.1</b>	<p><b>Delete core clause 22.1 in its entirety and replace it with the following clauses:</b></p> <p>The Contractor carries out, and is responsible for, the design of the works. The designs are prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the tender document.</p>

<b>22.2</b>	The Contractor shall design, execute and complete the works in accordance with the contract, and shall remedy any defects in the works. When completed, the works shall be fit for the purposes for which the works are intended. .
<b>22.3</b>	The Contractor warrants that it has the experience and capability necessary for the design.
<b>26 Subcontracting</b>	
<b>26.1</b>	<p><b>Core clause 26.1 to be amended as follows:</b></p> <p>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.</p>
<b>26.3</b>	<p><b>Core clause 26.3 to be amended as follows:</b></p> <p>The Contractor submits the conditions of contract for each subcontract to the Project Manager and may redact all commercially sensitive information.</p>
<b>26.4</b>	<p><b>Add a new core clause 26.4 as follows:</b></p> <p>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.</p>
<b>26.5</b>	<p><b>Add a new core clause 26.5 as follows:</b></p> <ul style="list-style-type: none"> <li>• If the Contractor does not make payment of</li> <li>• 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.</li> </ul> <p>Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.</p>
<b>26.6</b>	<p><b>Add a new core clause 26.6 as follows:</b></p> <p>All adverse effects as a result of or arising from the Subcontractor debt does not result in a compensation event.</p>

<b>27</b>	
<b>Health, safety and the environment</b>	
27.4	Clause 27.4 is deleted in its entirety and replaced with the following:  <b>Health and Safety specification</b>
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, Edition 23 (latest edition), including the Code of Practice: Managing exposure to SARS-CoV-2 in the workplace 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 Annexures A, B and C and all required Regulations and Standards applicable to the work of this contract.
27.4.5.1	The <i>Contractor</i> shall appoint a <i>Registered Competent Person as per Legislation requirements</i> .
27.4.6	The <i>Contractor</i> confirms that it has received sufficient information about the Site and the <i>works</i> in order to: <ul style="list-style-type: none"> <li>• comply with the provisions of the Act and the Construction Regulations 2014,</li> <li>• comply with the provisions of this clause;</li> <li>• adhere to the <i>Employer's</i> health and safety baseline specification, baseline risk assessment and SHEQ Policy as set out in Annexures A, B and C;</li> <li>• be properly appointed in accordance with Section 37(2) of the Act as contemplated in clause 27.4.3;</li> <li>• and to prepare a site-specific Baseline Risk Assessment.</li> </ul>

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), and Annexures A, B and C. By entering into this contract it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act;
27.4.8.2	acknowledges and confirms that the Prices includes a sufficient amount for proper compliance with the Construction Regulations 2014, 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 <i>works</i> ;
27.4.8.3	undertakes, in and about the execution of the <i>works</i> , 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	Annexures A, B and C 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/ works 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>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> .
<b>5 Payment</b>	
<b>51 Payment</b>	
<b>51.2</b>	Amend this clause by deleting the second and the third sentences of the clauses and replace them with the following:  If a certified payment is late by more than 8 weeks, interest is paid on the late payment. Interest is assessed from 4 weeks after the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
<b>51 Payment</b>	Amend this clause by adding the following clauses at the end of the clause.
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.
<b>6 Compensation Events</b>	

61 Notifying compensation events	
61.3	<p>Delete the second bullet point in core clause 61.3 which reads <i>“the Project Manager has not notified the event to the Contractor”</i>.,</p> <p><i>Amend the last paragraph of the core clause 61.3 to read</i></p> <p><i>“If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date.”</i>”.</p>
62.3	<p><i>Add to core clause 62.3,</i></p> <p><i>“The Programme Manager’s reply which is an acceptance of a quotation for a compensation event may require the due authority of the Employer.”</i></p>
62.5	<p><i>Add to core clause 62.5,</i></p> <p><i>“The Project Manager notifies the Contractor if the Employer’s authority is required and includes in his notification any extension to the period within which he is required to reply to the Contractor’s quotation.</i></p>
9 Termination	
91.1	<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>
91.2	<p>Amend this clause sub-bullet point two (R12) to read as follows:</p> <p><i>“not provided an on-demand performance bond or guarantee which this contract requires and/or failed to renew on-demand performance bond or guarantee upon expiry (R12)”</i>.</p>
91.3	<p>Amend this clause by adding the following at the end of the clause:</p> <ul style="list-style-type: none"> <li>• <i>“failed to effect any of the required insurances(R22);</i></li> <li>• <i>failed to provide a satisfactory recovery plan pursuant to Clause 37 (The Contractor’s recovery plan) (R23); or</i></li> <li>• <i>failed to comply with the provision of Clause Z3 (Broad Based Black Economic Empowerment) (R24).</i></li> </ul> <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>
91.8	<p>Add a new core clause 91.8 as follows:</p>

	The Employer terminates if the Contractor reaches 10 % of the delayed damages amount being the maximum amount. (R25). When terminating for R25 - 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.
<b>9.0</b>	Insert the following new clause 9.4
<b>9.4 Termination for convenience</b>	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.
<b>Option X2: Changes in the Law</b>	
<b>X2.2</b>	Amend this clause by the addition of the following new clause:  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
<b>Option X13: Performance Bond</b>	Amend this clause by adding the following new clause at the end of this clause: <b>(if applicable in this contract)</b>
<b>X13.2</b>	The <i>Contractor</i> ensures that the on-demand 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: <ul style="list-style-type: none"> <li>the date of issue of the Defects Certificate; or</li> <li>the date when the last <i>defect</i> notified has been remedied or accepted in accordance with this contract.</li> </ul>
<b>X13.3</b>	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:

	<ul style="list-style-type: none"> <li>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,</li> <li>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,</li> <li>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, or</li> <li>the occurrence of any one of the following termination reasons: R1 to R15, R18 and R22 to R24.</li> </ul>
<b>X13.4</b>	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.
<b>X13.5</b>	<p>Step Down</p> <p>The performance bond reduces by half its value on the date of issue of the Certificate of Completion.</p> <p>The performance bond expires/lapses on the later of:</p> <ul style="list-style-type: none"> <li>the date of issue of the Defects Certificate; or</li> <li>the date when the last <i>defect</i> notified has been remedied or accepted in accordance with this contract.</li> </ul>
<b>X15.1</b>	<p>Delete clause X15.1 in its entirety and replace with the following sentence:</p> <p><i>"The Contractor is liable for Defects in the works due to his design. The Contractor's design and works must be fit for its intended purpose."</i></p>
<b>PART C – Additional Clauses (entitled Z-Clauses)</b>	
<b>Z1</b>	<b>Cession delegation and assignment</b>
<b>Z1.1</b>	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> .
<b>Z1.2</b>	<p>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>.</p> <p>For the purpose hereof</p>

Z1.2.1	an “Client” means the employer and includes its successors in title and permitted assignees under this agreement;
Z1.2.2	a “related party” 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
Z1.2.3	“Control” 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.
<b>Z2</b>	<b>Joint ventures</b>
Z2.1	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.
Z2.2	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.
Z2.3	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.
<b>Z3</b>	<b>Broad Based Black Economic Empowerment, Construction Industry Development Board grading and the valid and active Tax Compliance Status Pin issued by SARS.</b>
Z3.1	The <i>Contractor</i> warrants that it will:
Z3.1.1	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;
Z3.1.2	maintain or improve (i) the BEE rating stated in its BEE certificate (ii) the <b>contractor’s</b> Construction Industry Development Board grading, and (iii) its valid and active Tax Compliance Status Pin issued by SARS submitted at tender stage; and
Z3.1.3	not conduct any Fronting practices as defined in the Codes of Good Practice.
<b>Z4</b>	<b>Change of Broad Based Black Economic Empowerment (B-BBEE) status</b>

Z4.1	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.
Z4.2	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> .
Z4.3	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.
Z4.4	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.
Z5	<b>Ethics</b>
Z5.1	<p>For the purposes of this Z-clause, the following definitions apply:</p> <p><b>Affected Party</b> means, as the context requires, any party, irrespective of whether it is the Contractor or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,</p> <p><b>Collusive Action</b> means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,</p> <p><b>Committing Party</b> means, as the context requires, the <i>Contractor</i>, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,</p> <p><b>Corrupt Action</b> means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,</p> <p><b>Fraudulent Action</b> means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,</p> <p><b>Obstructive Action</b> means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and</p> <p><b>Prohibited Action</b> means any one or more of a Coercive Action, Collusive Action, Corrupt Action, Fraudulent Action or Obstructive Action.</p>
Z5.2	A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof
Z5.3	The Employer may terminate the Contractor's obligation to Provide the Works if a Committing Party has taken a Prohibited Action and the Contractor did not take timely and

	<p>appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Employer has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the Employer can terminate the Contractor's obligation to Provide the Works for this reason.</p> <p>If the Employer terminates the Contractor's obligation to Provide the Works for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.</p>
Z5.4	A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the Employer does not have a contractual bond with the Committing Party, the Contractor ensures that the Committing Party co-operates fully with an investigation.
Z5.5	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 a Prohibited Action such as an inducement or reward for the award or in execution of this contract, including Fronting as referenced in Sub-Clause Z3.1.3, constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Services or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).
Z5.6	Such Prohibited Action 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 an approved vendor data base of the <i>Employer</i> as a consequence of such Prohibited Action.
<b>Z6</b>	<b>Confidentiality</b>
Z6.1	<p>Both Parties agree that in the course of the contract they shall exchange information between them and that they wish to protect the confidentiality of such information.</p> <p>Accordingly, for this clause, the "Discloser" shall mean the Party disclosing Information and the "Recipient" shall mean the Party receiving Information.</p> <p>"Information" shall mean all commercial, financial, technical, operational or other information appertaining to the Service and arising out of or in relation to the Contract (including without limitation all data, know-how, calculations, designs, drawings, methods, processes, systems, explanations, demonstrations etc.) as have been or may be disclosed or otherwise made available by the Discloser to the Recipient or to any person on the Recipient's behalf or to which the Recipient or any person on the Recipient's behalf has been granted access to (any such disclosure, availability or granting of access being referred to in this Agreement as "disclosure"), but shall exclude any such information which:</p> <p>(a) prior to disclosure was in the possession of the Recipient, as evidenced by the written records of the Recipient, and which the Recipient was entitled to use; or</p> <p>(b) at the time of disclosure the Information is in the public domain other than by reason of a breach of duty or of this Contract; or</p>



	<p>(c) after disclosure is received by the Recipient in good faith from a third party who is under no obligation of confidence in relation thereto or becomes generally available to third parties by publication or otherwise, other than by reason of a breach of duty or of this Agreement; or</p> <p>(d) the Discloser is compelled to disclose by virtue of a court order or tribunal</p>
Z6.2	Any disclosure of Information shall be solely for the purpose of the performance of the Contract and the Work and the Recipient shall not use nor permit nor cause others to use Information for any other purpose without the prior written consent of the Employer.
Z6.3	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 noted in the clause above. 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 Employer.
Z6.4	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as confidential until notified otherwise by the <i>Project Manager</i> .
Z6.5	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.
Z6.6	The taking of images (whether photographs, video footage or otherwise) of the <i>works and/or services</i> or any portion thereof, in the course of Providing the Services/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> .
<b>Z9</b>	<b><i>Employer's limitation of liability</i></b>
Z9.1	The <i>Employer's</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	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.
<b>Z10</b>	<b><i>Employer's Step-in Rights and Additional Remedies</i></b>
Z10.1	In the event the <i>Contractor</i> and/or his subcontractor:



Z10.1.1	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> , within the period of reply, in accordance with notices under Sub-Clause 16.1 (Early Warning) and/or Sub-Clause 13.1 (Communications), or
Z10.1.2	commits a breach of the Contract which reasonably places the project at risk of non-completion by the Completion Date, or non-Completion; or
Z10.1.3	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.
Z10.2	The <i>Contractor</i> shall co-operate with the <i>Employer</i> and facilitate and permit the use of all required Contractor's Equipment, Goods, information, materials and other matter (including Contractor's Documents and all other drawings, CAD files, technical data, models, plans, designs, diagrams, evaluations, details, specifications, schedules, reports, calculation results, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the <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.
Z10.3	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.
<b>Z11</b>	<b>Employer Procured Materials and Goods</b>
Z11.1	The <i>Employer</i> is entitled but not obliged to procure materials and goods on behalf of the <i>Contractor</i> upon Contractor's request.
Z11.2	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:
Z11.2.1	issue to the <i>Project Manager</i> a list of all materials and goods the <i>Contractor</i> requires;

Z11.2.2	state in the list, the time within which such materials and goods must be provided;
Z11.2.3	take delivery of such materials and goods provided by the <i>Employer</i> ;
Z11.2.4	the Contractor and Project Manager shall ensure that the correct quantity of material is delivered and confirmed as delivered to Site, respectively prior to payment.
Z11.3	The <i>Contractor</i> shall be responsible for and takes the risk on all materials and goods despite the Employer procuring such materials and goods The <i>Contractor indemnifies and holds the Employer harmless</i> against all losses/damages and/or costs arising from any damage, loss or theft of such materials and goods.
Z11.4	The <i>Contractor</i> shall not be entitled to a compensation event (extension of time and costs) for the late delivery of any materials and goods procured by the <i>Employer</i> .
Z11.5	The cost(s) of all materials and goods procured by the <i>Employer</i> on behalf of the <i>Contractor</i> in accordance clause Z11 shall be deducted from the next payment certificate due to the <i>Contractor</i> .
Z11.6	The <i>Contractor</i> acknowledges that all <i>Employer</i> supplied materials and goods remain the property of the <i>Employer</i> .
<b>Z12</b>	<b>Contractor Undertaking re CIDB and Tax Certificates</b>
Z12.1	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.
Z12.2	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.
<b>Z13</b>	<b>RIGHT TO AUDIT</b>
Z13.1	The Employer 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 the <i>Employer's</i> policies or procedures.

Z13.2	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.
Z13.3	The <i>Contractor</i> 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).
Z13.4	The <i>Contractor</i> shall ensure that the rights in this clause 18 also apply to any subcontractors and that the <i>Employer</i> be afforded the same auditing rights by the subcontractors.
Z13.5	The <i>Employer</i> 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 <i>Employer</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Employer</i> , to the extent permitted by law prior to disclosure, notifies the <i>Contractor</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>Employer</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.
Z14	<b>Intellectual Property</b>
Z14.1	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.
Z14.2	The Employer grants the Contractor a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.
Z14.3	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.
Z14.4	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.

<b>Z14.5</b>	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.
<b>Z14.6</b>	<p><b>Modification or replacement of the Works</b></p> <p>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.</p>

## **C1.2 CONTRACT DATA (Continued)**

### **Part two – Data provided by the Contractor**

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

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

A condition of contract is that:

- The contractor shall achieve in the performance of the contract the **Contract Skills Development Goal** (established in the **cidb Standard for Developing Skills through Infrastructure Contracts, published in Gazette Notice No 43495 of 3 July 2020**.
- The contractor shall achieve in the performance of the contract the **Contract Participation Goals (CPG)** relating to the engagement of targeted enterprises as established in the **cidb Standard for Indirect Targeting for Enterprise Development through Construction works Contracts Gazette Notice No 36190 of 25 February 2013**.

**Notes to a tendering contractor:**

- Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)<sup>2</sup> in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 152 to 154 of the ECC3 Guidance Notes.
- 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
- 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**

- The *Contractor* is  
Name .....  
Address .....  
.....
- The *direct fee percentage* is. .... %.
- The *subcontracted fee percentage* is. .... %.
- The *working areas* are the Site and .....  
.
- The key people are  
(1) Name .....  
Job .....  
Responsibilities .....  
.....  
Qualifications .....  
Experience .....  
.....  
(2) Name .....  
Job .....  
Responsibilities .....  
.....  
Qualifications .....  
.....  
Experience .....  
.....
- 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**

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

**If a programme is to be identified in the Contract Data**

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

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

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

- 
- The *Activity Schedule* is .....  
..

**Data for the  
Shorter Schedule  
of Cost  
Components**

- The tendered total of the Prices is. ....  
.....
- The percentage for people overheads is ..... %.
- The published list of Equipment is the last edition of the list published by  
.....
- The percentage for adjustment for Equipment in the published list is  
..... % (state plus or minus).
- The rates for other Equipment are
 

Equipment	size or capacity	rate
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
- The hourly rates for Defined Cost of design outside the Working Areas are
 

category of employee	hourly rate
.....	.....
.....	.....
.....	.....
.....	.....
- The percentage for design overheads is ..... %.
- The percentage for profit is..... %.
- 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]*

1. In this Guarantee:

1.1 the following words and expressions have the following meanings:

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

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

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

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

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

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

1.1.6 “this Guarantee” - means this Performance Bond;

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



- 1.1.8 “Project Manager” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; and
- 1.1.9 a “recovery statement”, an “interim payment certificate”, a “Payment Certificate”, a “Certificate(s) of Completion” or “Defect Certificate” shall mean any such certificate as issued by the Project Manager;
- 1.2 words and expressions defined in the Contract shall, unless otherwise defined in this Guarantee or otherwise required by the context of this Guarantee, have the same meanings in this Guarantee as those ascribed to them in the Contract, albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.
2. At the instance of the *Contractor*, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of *Employer*, as security for the proper performance by the *Contractor* of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to *Employer*, on written demand from *Employer* envisaged in paragraph 3 below and received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.
3. The Guarantor’s liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:
- 3.1 Maximum Guaranteed Sum (not exceeding 10% of the 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.
- 3.2 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.
- 3.3 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 3.1 to 3.3 shall apply in respect of any claim received by the Guarantor during the Security validity.
4. A demand for payment under this Guarantee shall be made in writing at the Guarantor’s address and shall:
- 4.1 confirm the “Guaranteed Sum” at the time of the demand;



- 4.2 state the amount claimed ("the Demand Amount"); and
- 4.3 state that the Demand Amount is payable to *Employer* in the circumstances contemplated in the Contract:
- 4.3.1 in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:
- 4.3.1.1 state that such first written demand notice issued by *Employer* to the Guarantor at the Guarantor's Address, with a copy to the *Contractor*, records that a period of seven (7) calendar days has elapsed since the issue of the first written demand notice in terms of paragraph 4.3.1.2 and that the sum certified has not been paid to date. *Employer* herewith calls up this Guarantee and demands payment of the sum certified from the Guarantor;
- 4.3.1.2 be accompanied by a copy of a preceding first written demand notice issued by *Employer* to the *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 4.3.1.1;
- 4.3.1.3 and
- 4.3.1.4 shall be accompanied by a copy of the applicable payment certificate which entitles *Employer* to receive payment in terms of the Contract of the sum certified;
- 4.3.2 where the Demand Amount is for the Guaranteed Sum or the full outstanding balance thereof, *Employer* shall deliver a first written demand notice to the Guarantor at the Guarantor's Address calling up this Guarantee stating that:
- 4.3.2.1 the Contract has been terminated due to the *Contractor's* default and that the Guarantee is called up in terms of this sub-paragraph. This demand shall enclose a copy of the notice of termination; or
- 4.3.2.2 a provisional sequestration or liquidation court order has been granted against the *Contractor* and that the Guarantee is called up in terms of this sub-paragraph. The demand notice shall enclose a copy of the court order.
5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:
- 5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor's obligation/s to make payment:
- 5.1.1 is and shall be absolute and unconditional in all circumstances; and
- 5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;

6. *Employer* shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting the Guarantor's liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.
7. Should *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then *Employer* shall be entitled to cede to such third party the rights of *Employer* under this Guarantee on written notification to the Guarantor of such cession.
8. The Guarantor's obligations in terms of this Guarantee:
  - 8.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - 8.2 shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between *Employer* and the *Contractor*.
9. This Guarantee:
  - 9.1 shall expire on the Expiry Date until which time it is irrevocable;
  - 9.2 is, save as provided for in 7 above, personal to *Employer* and is neither negotiable nor transferable;
  - 9.3 shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - 9.4 shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to *Employer* and, secondly, obtaining any court order; and
  - 9.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
10. The Guarantor chooses the *domicilium citandi et executandi* for all purposes in connection with this Guarantee at the Guarantor's Address.

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Guarantor

Guarantor Signatory 1: \_\_\_\_\_

Guarantor Signatory 2: \_\_\_\_\_

Capacity of Guarantor

Signatory 1: \_\_\_\_\_

Capacity of Guarantor

Signatory 2: \_\_\_\_\_

Witness: \_\_\_\_\_  
(Printed Name  
of Witness) \_\_\_\_\_

Witness: \_\_\_\_\_  
(Printed Name  
of Witness) \_\_\_\_\_

Guarantor's seal or stamp

## PART 2: PRICING DATA

**NEC 3 Engineering and Construction Contract Option A:** Priced Contract with *Activity Schedule* of April 2013 (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Assumptions: Option A	2
C2.2	Pricing Instructions	1
C2.3	The Activity Schedule	2
C2.4	Amendments, Qualifications And Alternatives By Tenderer	1
	Total number of pages	6

## **C2.1 PRICING ASSUMPTIONS: OPTION A**

### **1 How work is priced and assessed for payment**

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

<b>Identified and defined terms</b>	11 11.2	<p>(21) The Activity Schedule is 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"> <li>the quantity of the work which the Contractor has completed for each item in the Activity Schedule multiplied by the rate and</li> <li>a proportion for each lump sum which is the proportion of the work covered by the item the Contractor has completed.</li> </ul> <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 Activity Schedule.</p>
<b>Acceleration</b>	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.
<b>The Activity Schedule</b>	55 55.1	Information in the Activity Schedule is not Works Information or Site Information.
<b>Compensation events</b>	60 60.4	<p>A difference between the final total quantity of work done and the quantity stated for an item in the Activity Schedule is a compensation event if</p> <ul style="list-style-type: none"> <li>the difference does not result from a change to the Works Information</li> <li>the difference causes the defined cost per unit of quantity to change and</li> <li>the rate in the Activity Schedule 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.</li> </ul> <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 Activity Schedule 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 Activity Schedule 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 Activity Schedule and another document, the Contractor is assumed to have taken the Activity Schedule as correct.
<b>Assessing compensation events</b>	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"> <li>• a change to the Works Information or</li> <li>• a correction of an assumption stated by the Project Manager for assessing an earlier compensation event</li> </ul> <p>the Prices are reduced.</p>
	63.13	<p>Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.</p> <ul style="list-style-type: none"> <li>• For the whole or part of a compensation event for work not yet done and for which there is an item in the Activity Schedule, the changes are a <ul style="list-style-type: none"> <li>○ A change rate,</li> <li>○ A changed quantity or</li> <li>○ A changed lump sum.</li> </ul> </li> <li>• For the whole or a part of a compensation event for work not yet done and for which there is no item in the Activity Schedule, 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</li> <li>• For the whole or a part of a compensation event for work already done, the change is a new lump sum item.</li> </ul> <p>If the Project Manager and the Contractor agree, rates and lump sums may be used to assess a compensation event.</p>
<b>Implementing compensation events</b>	65 65.4	<p>The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.</p>

## **C2.2 PRICING INSTRUCTIONS**

- 1 The Activity Schedule to be priced is to be drawn up by the Contractor.
- 2 The agreement is based on the NEC3 suite of documents, Option A. 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 Activity Schedule (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](http://www.stanza.org.za) or [www.iso.org](http://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 Activity Schedule is not intended for the ordering of materials. Any ordering of materials, based on the Activity Schedule, is at the Contractor's risk.
- 8 Activity Schedule and pricing to be submitted should be at a detailed level.
- 9 No variations will be considered for any omissions by the tenderer.
- 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.
- 11 Bidders are required to make reference to the specifications for the full extent of the works required to be done under each of the trade activities listed in this Activity Schedule

## C2.3 THE ACTIVITY SCHEDULE

The following Activity Schedule/Risk Register **provides the minimum quantities to be priced**. The Tenderer may expand on this Activity Schedule, to include any additional items/quantities as deemed necessary.

Attached as separate **Annexure G**, in Excel format and should be populated in Excel and then be converted to PDF format, which must be signed and submitted with the Excel format.

Both formats to be submitted.

The priced Activity Schedule (to be compiled by Contractor), following hereafter will form an integral part of the “Contract” between the successful appointed Contractor and the Employer.

I, \_\_\_\_\_ of \_\_\_\_\_,  
(Authorised Signatory) (Company Name)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



## C2.4 AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES BY TENDERER

- Use this page as a cover page to the *Amendments, Qualifications and Alternatives by Tenderer*.
- Unless otherwise stated in the tender data, amendments, qualifications and alternatives shall be recorded here

PAGE	CLAUSE OR ITEM	PROPOSAL

I, \_\_\_\_\_ of \_\_\_\_\_,  
(Authorised Signatory) (Company Name)

Hereby acknowledge having read, understood and agree to requirements as set out in C2.4 and warrant that the documents submitted are true and accurate.

\_\_\_\_\_  
(Signature) (Date)

## PART 3: SCOPE OF WORK

### NEC 3 Engineering and Construction Contract Option A: Priced Contract with *Activity Schedule*

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	1
	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.

<b>Area</b>	<b>Reference</b>
National Building Regulations (NRB)	SANS 10400 (SABS 0400)
Construction Work	Applicable SANS 2001 Standards for Construction Works
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
<i>Quality</i>	<i>SANS 9001/ISO 9001 – Quality Management Standard</i>
<i>Quality</i>	<i>Standard for Quality Management Systems (ISO) 9001:2015</i>
<i>Safety</i>	<i>Occupational Health and Safety Act, Act Nr 85 of 1993 including the following Regulations:.</i>
<i>Safety</i>	<i>Pressure Equipment Regulations, 2009</i>
<i>Safety</i>	<i>Major Hazard Installation Regulations, 2001</i>
<i>SANS 347:2012</i>	<i>Categorization and conformity assessment criteria for all pressure equipment.</i>
<i>Health</i>	<i>National Norms and Standards relating to Environmental Health in terms of National Health Act, 2003 (Act Nr 61 of 2003)</i>
<i>General</i>	<i>Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017.</i>

- i. The contractor shall provide a minimum **Contract Participation Goal (CPG) of 5%** of the total project value and develop targeted enterprises in two agreed developmental areas.
- ii. The contractor shall appoint an **Enterprise Development Coordinator** who shall:
  - a. Develop a project specific Enterprise Development plan to improve the targeted enterprise's performance in the identified developmental areas and shall allocate resources to monitor progress in relation to improved performance and
  - b. Submit to the employer's representative a monthly enterprise development report (Performa ED 105 P) which documents all mentoring activities that have taken place during that month and the progress made in improving the targeted enterprise's performance in the agreed developmental areas, countersigned by the targeted enterprise
- iii. The **Enterprise Development Coordinator** shall have the following competencies (this is a condition of contract and will not be assessed during evaluation):
  - a. Minimum experience of 5 years in the construction industry at Managerial level as a Site Agent, Contracts Manager, Site Manager, Construction Manager, Business Development Manager or Enterprise Development Manager.
  - b. Minimum experience of 2 years in training and development in Building or Construction; and;
  - c. National Diploma or B Degree in the Built Environment or Business Management

## **C3.2 CONTRACTORS WORKS INFORMATION**

### **3.2 DESCRIPTION OF THE WORKS**

#### **3.2.1 Employer's objectives**

The Development Bank of Southern Africa (DBSA) entered a partnership and signed a Memorandum of Agreement (MOA) with the City of Tshwane. The DBSA shall primarily ensure that it implements the turnkey ME solution in order to address the Phase 1 critical items that enable the plant to improve its operations.

#### **3.2.2 Overview of the works**

**The Contractor must provide the following resources, registered with the relevant statutory regulatory bodies, and active registration certificates to be included in the resource's documentation. detailing experience is the Pre-Qualifier, however the Proof of Registration with a recognized professional body/ institution, is part of the Qualifications Requirements)**

- i. Project Manager
- ii. Quantity Surveyor
- iii. Civil Engineer
- iv. Structural Engineer
- v. Electrical & Electronics/Instruments Engineer
- vi. Mechanical & Fire Engineer
- vii. Construction Health and Safety Agent
- viii. Social / Development Facilitator

#### **High Level implementation stages**

- Stage 1: Initiation
- Stage 2: Concept
- Stage 3: Design Development
- Stage 4: Design Documentation
- Stage 5: Construction Works
- Stage 6: Handover
- Stage 7: Close out

#### **3.2.3 Existing Project Information**

It is important to note that the waste water plant is currently in operation. Some information such as drawings and specifications have been shared as part of tender package. However, the Turkey PSPs must develop the information so that it meets requirements for the plant to be fully functional.

### **3.3 SCOPE OF WORK & WORK DONE**

The major items to be covered under the scope of works as follows

- North Works Diffusers Installations (Five reactors)
- North Works installation of mixers and additional poles etc. (Five reactors)
- North Works electrical and instrumentation controls to ensure reactors are operational (Five reactors)
- North Works Removal of sludge, sand etc. (Five reactors)
- North Works major refurbishment and repairs to the blowers
- North Works Mechanical and Electrical Maintenance (SST)
- Belt Presses Installations
- Mechanical Accessories Belt Press incl. design
- Electrical and Instruments Accessories Belt Press incl. design
- Conveyor Belt Designs, Installations interlinking with belt presses
- Painting of handrails, gratings making good of all trades

### 3.4 DELIVERABLES

#### Deliverables per stage

In terms of the project stages, the following activities will be undertaken by the Turnkey Contractor to the extent that they have not been done by the previous professionals:

#### Stage 1: Initiation

During the initiation phase the following items will be addressed:

- Attendance of briefing meeting.
- Set-up and signing of DBSA-Turnkey Contractor contract.
- Obtaining locality / Facility manager information, document and report templates and information prepared by previous consultants on site development plans.
- Compile Project Execution Plan (PEP) for approval by DBSA.
- Obtain DBSA approval of PEP.
- Stakeholder Register & Consultations with local authorities and other relevant authorities (if required).
- Conduct relevant studies and obtain necessary approvals for proposed work (Topographical survey, Geotechnical Investigation, Traffic Impact Assessment, etc., as required).
- Obtain client requirements and agree on scope.
- Review and update existing master plan to develop a site development plan.
- Develop Cost Estimates, Suggested Procurement Strategies and Indicative Implementation Schedules for recommended interventions.
- Stage Gate Notification / Client Approval to Proceed to Next Stage.

#### Stage 2: Concept

- Prepare concept design drawings for work required excluding work with existing designs.
- Review existing designs for buildings.
- Prepare implementation plan.
- Prepare preliminary cost estimate.
- Prepare site-specific Health and Safety specification including a detailed Baseline Risk Assessment.
- Identify and prepare work packages for SMMEs.
- Submit concept design drawings and preliminary cost estimate to DBSA for approval.
- Client review and approval of concept design drawings and preliminary cost estimate.
- Submit Site Development Plans to local authorities.
- Stage Gate Notification / Client Approval to Proceed to Next Stage.

#### Stage 3: Design Development / Detailed Design

- Review as necessary the site development plans and/or other suitable schematic layouts of the works and obtain the necessary statutory permissions, funding approvals or utility approvals to proceed with the works associated with the package.
- Prepare coordinated detailed design drawing/schedules, i.e. detailed architectural drawings and specifications (from existing drawings) and detailed engineering drawings and specifications (from existing engineering designs). This includes to produce the final detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction (where the contractor is able to build directly from the information prepared) or the production of manufacturing and installation information for construction.
- Prepare detailed designs for work required excluding work with existing designs.
- Designs and specifications to be in full accordance with SANS 10400 (all sections, including XA). Specifications for all components are to be written with reference to the specification guidelines (where relevant) to be provided by the DBSA (and others where relevant).
- Submit design documentation to local authorities and obtain approval thereof.
- Review and update the existing Activity Schedule for buildings.
- Submit detailed design drawings, reports, Activity Schedule to DBSA.
- Prepare detailed cost estimates (full Activity Schedule from elemental Activity Schedule).
- Check cost estimates and adjust design and documents, if necessary, to remain within budget.

- Prepare detailed design reports.
- DBSA review of detailed designed drawings.
- DBSA approval of detailed design drawing.
- Review documentation programme with principal consultant and other consultants involved.
- Review design, drawings and schedules for compliance with approved budget.
- Update a baseline program schedule for the project.
- Stage Gate Notification / Client Approval to Proceed to Next Stage

#### Stage 4: Documentation & Procurement

- Prepare the construction project health and safety documentation for submission to authorities.
- Updated written report on budget, construction cost using site specific scope and tendered rates.
- Stage Gate Notification / Client Approval to Proceed to Next Stage.

#### Stage 5: Works

Full execution and oversight of the construction works: provide services related to the full construction and oversight of the construction in line with the standard professional practices. This includes liaison with the client to take over the completed area on agreed basis and appoint a full-time clerk of works for administration and supervision of the work on-site.

Examples of the services expected include but is not limited the following.

- Facilitate sustained development facilitation and attainment of set socio-economic objectives of project,
- Ensure compliance to OHSA, Environmental and all applicable regulations.
- Assess and approve the principal contractor/s construction project health and safety plans at each site. Submit necessary documentation to authorities and facilitate permit required to commence to construction work
- Issue construction documentation in accordance with the documentation schedule.
- Carry out contract administration procedures in terms of contracts.
- Provide monthly progress reports.
- Conduct and submit monthly Occupational Health and Safety Compliance Audit Reports.
- Prepare schedules of predicted cash-flow.
- Conduct regular site, technical, steering committee, and progress meetings.
- Execute works and inspect for conformity to compliance and design intent.
- Establish and maintain a financial control system.
- Prepare valuation for payment certificates, financial control report. Progressive and draft final accounts.
- Witness and review all test and mock-ups carried out both on and off-site.
- Check and approve contractor fabrication drawings.
- Update and issue drawings register.
- Issue contract instructions as and when required.
- Review and comment on operation and maintenance manuals, guarantee certificates, and warranties.
- Arrange for the delivery of all test certificates, including electrical certificates of compliance, statutory and other approvals, as-built drawings, and operating manuals.
- Manage scope change and prepare motivation for variation order if required.
- Prepare pro-active estimates of proposed variation for client-decision making.
- Prepare, submit, and implement a complete quality control program including a quality assurance plan including ensuring testing and quality control for conformity with specification and standards.
- Provide information for reports as required.
- Oversight reports on construction inspection and progress to include, amongst other things the following:
  - Proof of compliance to OHSA, Environmental and all applicable regulations.
  - Construction documentation and drawing issue register.
  - Schedule of predicted cash-flow.
  - Monthly progress report.
  - Minutes of all site meetings held.
  - Estimates of proposed variation.

- Construction Programme and ongoing updates thereof.
- Financial control reports.
- Monthly updated quantities in relevant software applications.
- Payment certificates.
- Progressive and draft final accounts.
- Practical completion certificates and defects lists.
- Certificate of Compliance, e.g. Fire installation, electrical, plumbing, etc.
- Municipal/building control approvals.
- Record of hand over provisional departments.

#### Stage 6: Handover

- Finalise and assemble record information which accurately reflects the infrastructure that is acquired, rehabilitated, refurbished or maintained.
- Hand over the works and record information to the user organisation and if necessary, train end user staff in the operation of the works.
- Stage 6 is complete when the Handover/Record Information Report is approved.

#### Stage 7: Close out

- Record information is archived.
- Defects certificates and certificates of final completion are issued in terms of the contract.
- Final amount due to the contractor is certified, in terms of the contract.
- Close-Out Report is prepared by the PSP, reviewed by the Implementer and approved by the Client Department.
- Prepare the consolidated construction project health and safety close-out report.
- Stage 7 is complete when the Close-Out Report is approved.

### 3.5 DEVELOPMENT FACILITATION

- The Turnkey Contractor is expected to engage meaningfully and intensively with stakeholders such as the local community leadership, the DBSA, City of Tshwane, Local Community Structures, etc., for the purpose of obtaining buy-in, support, additional relevant documentation, policies, norms and standards, strategic plans, Departmental perspectives, resolution of issues, etc. The development facilitation will entail execution of the charter according to the process set out by DBSA and GPW as identified by the client and will comprise the following:
  - Meeting with the relevant local community, authority and buy-in and ownership.
  - Identification of relevant stakeholders and analysis thereafter.
  - Conduct and record on workshops with identified stakeholders and obtain buy-in.
  - Developing a draft development charter/project charter.
  - Conduct a second round of workshops to ensure that all inputs are included.
  - Presentation of the final development charter.
  - Signing of development charter/project charter.
  - Working with the established project steering committee during implementation of the project.
  - Determine the availability of data, drawings and plans relating to the project by collecting and studying all necessary data (previous planning and implementation work) and information relevant to this study.

### 3.6 MANDATORY REQUIREMENTS AND GENERAL SPECIFICATIONS

See - Annexes F and Annexes E that needs to be consistent with your Proposed Design Drawing Layouts for the refurbishment of the Government Printing Works Administrative Headquarters (floor layout with sections and elevations)

In this section C3.2 the term client shall have the meaning ascribed to the term Employer in terms of this NEC3 ECC Option A Agreement,

The DBSA as an Implementing Agent will do the following for the remaining period of the contract:

- Procure, appoint a Turnkey Contractor



- Facilitate briefing session
- Evaluate bids and make recommendations,
- Manage and supervise the works by the Turnkey Contractor during implementation
- Conduct regular meetings with the Turnkey Contractor
- Report at regular meetings held by GPW
- Conduct site inspections during construction
- Continuous engagement with the relevant stakeholders
- Close the programme

### **Definition of pricing**

- The Bidder / Supplier / Contractor must quote in full for the design and construction of the administrative headquarters refurbishment, pedestrian link construction and construction of temporary car park on a turnkey basis.
- The Bidder / Supplier / Contractor must price for connection of all services from the point at which the employer such indicates the connection point during construction. Such prices must include electrical cabling, water pipes, and sewerage pipe.
- The Bidder / Supplier / Contractor must price for all regulatory cost requirements including registration of project with Department of Labour, Municipalities, Eskom, and others.

### **Contract management**

The bidder must price for all contract management responsibilities, construction health and safety requirements.

All costs must be in line with the applicable guidelines of respective Professional Councils at the time of RFP closing, and all personnel appointed must be in possession of active professional registration.

For commencement of works, all designs must be signed off by the respective professionals in line with SANS regulations.

### **CONDITIONS OF BIDDING AND FORMS OF CONTRACT**

- The bidder is responsible for all designs and costs associated with the preparation of their bid submission.
- The bidder shall not have any claims for costs reimbursements should their bid not be successful.
- All bids received shall be deemed in whole that they have considered all permutation for delivering the project / product is requested by the employer.
- The bidder must support their bid offer price with a detailed Activity Schedule for ease of evaluation, and work management. The attached Activity Schedule is for information purposes only. It is the bidder's responsibility to verify the information included in the Activity Schedule supplied and inform the DBSA if they detect discrepancies.
- The bidder's works and specifications shall comply to all Legislations and Regulations associated to the construction industry
- The employer reserves the rights to renegotiate the prices and conditions offered by the bidder
- All bids shall be received as the stipulated date and time of bid submission
- The employer shall provide access to the site earmarked for development
- The employer shall not pay for any deposit prior to commencement of works by successful bidder
- All payments for the contractor shall be payable as per the conditions of contract or where sectional completion is applicable, the supplier shall submit their claims after approval of

- works deemed complete by the employer
- The successful bidder is expected to conclude and sign the service level agreement prior to commencement of the contract
  - Should both the bidder and employer not reach agreement with respect to content, context, and legal framework of Service Level Agreement, the employer reserves the right to withdraw the appointment
  - The Contract to be used for the construction of the works shall be NEC3 option B with a Activity Schedule.

### **Occupational Health and Safety**

The Turnkey Contractor needs to comply with the following legal requirements:

- Occupational Health and Safety Act, 85 of 1993, Edition 23 (latest edition)
- Code of Practice: Managing exposure to SARS-CoV-2 in the workplace
- Annexure A - DBSA Occupational Health and Safety Baseline specification
- Annexure B - DBSA Baseline Risk Assessment;
- Annexure C - Safety, Health, Environment and Quality Policy.
- Full time Construction Health and Safety Officer (SACPCMP)

### 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.

<b>PARTICULAR SPECIFICATION</b>	<b>PAGE NO.</b>
POHS: HEALTH AND SAFETY BASELINE SPECIFICATION	Annexure A
B/RA: BASELINE RISK ASSESSMENT	Annexure B
SHEQ : DBSA SHEQ POLICY	Annexure C
<del>MANDATORY AND GENERAL REQUIREMENT SPECIFICATIONS</del>	<del>Annexure E/F</del>

## **PART 4: SITE INFORMATION**

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

## C4.1 LOCALITY PLAN

The work is located RWWTW WEST WORKS, NORTH WORKS & EAST WORKS

Area: Pretoria

Region: Gauteng



Figure 1



Figure 2



**Figure 3**