



## VOLUME 3 OF 3

## THE CONTRACT

### NEC 3 Engineering and Construction Contract Option A: Pricing Schedule for the design and construction for Lurhwayizo SSS.

## DEVELOPMENT BANK OF SOUTHERN AFRICA

Tender No. RFP097/2025

### APPOINTMENT OF A CONTRACTOR FOR THE DESIGN AND CONSTRUCTION OF LURHWAYIZO SENIOR SECONDARY SCHOOL IN THE EASTERN CAPE



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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:

<b><u>Document Reference</u></b>	<b><u>Title</u></b>	<b><u>Page</u></b>
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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

### DESIGN AND CONSTRUCTION OF LURHWAYIZO SSS

#### 1. NEC 3 Engineering and Construction Contract Option A: Pricing Schedule.

Document reference	Title	No of pages
C1.1	Form of Offer and Acceptance	5
C1.2	Contract Data	1
	Part One – Data provided by the <i>Employer</i>	28
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C1.3	Performance Guarantee	5
	Total number of pages	69

## 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: **RFP097/2025— APPOINTMENT OF A CONTRACTOR FOR THE DESIGN AND CONSTRUCTION OF LURHWAYIZO SSS IN THE EASTERN CAPE**

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
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 cover letter must be referenced here if applicable, or it will not be valid as part of this submission).**

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the 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**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C1.2	Contract Data	
	Part One – Data provided by the <i>Employer</i>	28
	Part Two – Data provided by the <i>Contractor</i>	3
C1.3	Performance Guarantee	5
	Total number of pages	28

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

### DESIGN AND CONSTRUCTION OF LURHWAYIZO

#### NEC 3 Engineering and Construction Contract Option A: Pricing Schedule

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: Pricing Schedule
	dispute resolution Option	
		W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X7: Delay damages
		X13: Performance Bond
		X16: Retention
		X18: Limitation of liability

		<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>DBSA (Thembekile Fono)</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(13)	The <i>works</i> is	Design and Construction of Lurhwayizo SSS	
11.2(14)	The following matters will be included in the Risk Register	Compliance with tender requirements; Personnel Clearance and Authorised Access to Site; Matters notified as early warnings; and Decisions resulting from risk reduction meetings.	
11.2(15)	The <i>boundaries of the site</i> are	Lurhwayizo SSS (Shown on the attached site plan)	
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.	
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	5 Days	
2	<b>The Contractor's main responsibilities</b>	Construction as per the scope of work	
3	<b>Time</b>		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	Design and Construction of Lurhwayizo SSS should be completed in <b>18 months</b> from starting date.  1. 2 months mobilization period during which the contractor must obtain the Construction Work Permit and conduct social engagements in liaison with the Employer.  2. 16 months construction period. The builder's holiday in December 2025 and January 2026 is included in the 18 months.	
30.1	The <i>access dates</i> are	<b>Part of the site</b> <b>TBC</b>	<b>Date</b>
30.3	The <i>key dates and 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 (one) week of the Contract Date.	
31.2	The <i>starting date</i> is	Site Handover Date	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks	
35.1	The <i>Employer</i> is not willing to take over the works before the Completion Date.	Confirmed	
4	Testing and Defects		
42.2	The <i>defects date</i> is	Contract 1: 12 months after [Completion of the whole of the works]	
43.2	The <i>defect correction period</i> is	30 days	
5	Payment		
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	
51.4	The <i>interest rate</i> is	the prime interest rate of the Standard Bank of South Africa Limited as amended from time to time	
6	Compensation events		
60.1(13)	The place where weather is to be recorded is	The closest weather station to site.	
	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 +2 hours GMT;</li> <li>and these measurements: hourly wind direction and windspeed</li> </ul>	

	The <i>weather measurements</i> are supplied by	<b>Contractor</b> and verified with closest weather station to site.
	The weather data are the records of the past <i>weather measurements</i> for each calendar month which were recorded at	<b>The closest weather station to site.</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:	<b>As obtained by the Contractor from the South African Weather Services verifiable records.</b>
8	<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>1. The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA).</li> <li>2. Public liability insurance to be effected by the contractor for the sum of <b>R15,000,000.00 (Fifteen Million Rand) per event</b> with a deductible in an amount that the contractor deems appropriate.</li> <li>3. Professional Indemnity for the sum of <b>R10,000,000.00 (Ten Million Rand) per claim</b> 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
84.1	The <i>Contractor</i> provides these additional insurances:	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)
84.2	<b>If the Employer is to provide Plant and Materials:-</b> the insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the Employer for an amount of	<b>N/A</b>

84.2	Insurance against loss of or damage to the <i>works</i> , Plant and Materials, without limitation on the number of claims	Insured sum is the total of the Prices plus 10%
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 Contractor) caused by activity in connection with this contract for any one event is, without limiting the number of claims.	Public liability insurance to be affected by the Contractor for the sum no less than <b>R15,000,000.00 (Fifteen Million Rand)</b> per event with a deductible in an amount that the Contractor deems appropriate
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is	as prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Contractor's common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than ZAR500 000.00 (Five hundred thousand Rands).
<b>DATA FOR MAIN OPTION CLAUSES</b>		
<b>Option B</b>	<b>Option A: Pricing Schedule</b>	There is no reference to Contract Data in this Option A 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				
X1	Price adjustment for inflation			
	The <i>base date</i> for indices is	No price adjustment allowed.  As per Pricing Instructions Part C2.1.		
	The proportions used to calculate the Price Adjustment Factor are:	0. [•]	linked to the index for	[•]
		0. [•]	linked to the index for	[•]
		0. [•]	linked to the index for	[•]
		0. [•]	linked to the index for	[•]
		1.00		
	The indices are those prepared by	[•] Indices to be obtained from Steel and Engineering Industries Federation of Southern Africa ( <b>SEIFSA</b> ), Producer Price Index (PPI) and Consumer Price Index (CPI).		
X7	Delay damages			
	Delay damages for Completion of the whole of the <i>works</i> are	The penalty per calendar day shall be calculated as per the current formula of penalty calculation by the Eastern Cape Department of Education up to a maximum of 10% of the Contract Price. Thereafter, the <i>Employer</i> shall have a right during the identified delay period to intervene and accelerate the work or		



		<p>appoint a third party to assist or complete the works to reach Completion. The cost of the appointed third party work shall be borne by the <i>Contractor</i>.</p> <p>EXAMPLE</p> <p>Estimated contract value = R2 500 000 (excluding VAT)</p> <p>Contract period = 18 months</p> <p style="text-align: center;">=R2 500 000 X0.0375/100</p> <p style="text-align: center;">= R937.50/day</p> <p>Therefore rounded off to the nearest R10-00 = R 940-00/day.</p> <p>To a maximum of 10% of the <i>Contract Price</i>. The <i>Employer</i> may terminate this Contract upon the <i>Contractor</i> reaching the maximum penalty of 10%.</p>	
<b>X13</b>	<b>Performance Bond</b>		
	The amount of the performance bond is	being an on-demand <b>Guarantee</b> issued by an entity registered in terms of the Short Term Insurance Act 53 of 1998-or the Banks Act of 94 of 1990 and 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> .	
<b>X16</b>	<b>Retention</b>		
	The <i>retention free</i> amount is	<b>0%</b>	
	The <i>retention percentage</i> is	<b>10%</b> of the <i>Contract Price</i>	
<b>X17</b>	<b>Low performance damages</b>		
	The amounts for low performance damages are	<b>amount</b>	<b>performance level for</b>
		<b>NEC 3 ECC Option A contract</b>	
		Up to 10% of the value of Contract 1	As per Tests On Completion (Annexure V)
<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>R0.00 (zero Rand)</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:	cost for loss or damaged incurred by the <i>Employer</i>
	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	<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 as adjusted in terms of X1 if X1 applies to the contract</i></b>
	The <i>end of liability date</i> is	<b>Latent defects 60 months</b> after the Completion of the whole of the <i>works/Sectional Completion/Commissioning</i> per section 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>N/A</b>
	A report of performance against each Key Performance Indicator is provided at intervals of	<b>Every two weeks</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(34):</p> <p>"Baseline Risk Assessment means the baseline risk assessment contemplated in regulation 5(1)(a) of the Construction Regulations."</p> <p>Add the following new definition as clause 11.2(35):</p> <p>"Construction Agent means an "agent" as per the Construction Regulations which means a competent person who acts as a representative for a client ("client" in this regard being the</p>

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(36):

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

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

“Construction Regulations means the Construction Regulations as defined in clause 27.4.2 below”

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

“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(39):

- **"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(40):

- **"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

Clause	Amendment
12 Interpretation and the law	
12.5	<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 of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing."</p>

<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> <li>"written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.</li> </ul>
<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> <li>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.</li> </ul>
<b>12.9</b>	<p>Week means a continuous period of 7 days.</p> <ul style="list-style-type: none"> <li>If the day for payment of any amount due by the <i>Employer</i> or <i>Contractor</i> 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.</li> </ul>
<b>12.10</b>	<ul style="list-style-type: none"> <li>Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.</li> </ul>
<b>12.11</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>12.12</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<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 which the Work Information states he is to design. 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. If errors, omissions, ambiguities,

	inconsistencies, inadequacies or other defects are found in the Contractor's Documents <sup>2</sup> , they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval, under this clause.
<b>22.3</b>	The Contractor warrants that it has the experience and capability necessary for the design.
<b>22.4</b>	<p>The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the tender documents as originally included in the tender and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.</p> <p>However, the Employer shall be responsible for the correctness of the following portions of the tender documents and of the following data and information provided by (or on behalf of) the Employer:</p> <ul style="list-style-type: none"> <li>(a) portions, data and information which are stated in the Contract as being immutable or the responsibility of the Employer,</li> <li>(b) definitions of intended purposes of the works or any parts thereof,</li> <li>(c) criteria for the testing and performance of the completed works, and</li> <li>(d) portions, data and information which cannot be verified by the Contractor, except as otherwise stated in the Contract.</li> </ul>
<b>22.5</b>	The design, Contractor Documents the execution and the completed works shall comply with the prescribed technical and international standards, building, construction and environmental laws, laws applicable to the product being produced from the works, and other standards specified in the tender document, applicable to the works, or defined by the applicable laws.
<b>22.6</b>	<p>The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the site and shall be used exclusively for the purposes of this contract. Two copies shall be supplied to the Employer prior to the commencement of the tests on Completion.</p> <p>In addition, the Contractor shall supply to the Employer as-built drawings of the works, showing all works as executed, and submit them to the Employer for review- these shall be known as the Contractor's Documents. The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.</p>
<b>22.7</b>	Prior to commencement of testing the works on completion, the Contractor supply's to the Employer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Plant, where necessary

<b>26 Subcontracting</b>	
<b>26.1</b>	<p><b>Core clause 26.1 to be amended as follows:</b></p> <p>The <i>Contractor</i> does not subcontract the whole or any part of the <i>works</i> without the written consent of the <i>Employer</i>, which consent shall be the sole discretion of the <i>Employer</i>. If the <i>Contractor</i> subcontracts work, he is responsible for Providing the <i>works</i> as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the <i>Contractor's</i>. For the avoidance of doubt, the <i>Contractor</i> 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 <i>Contractor</i>.</p>
<b>26.3</b>	<p><b>Core clause 26.3 to be amended as follows:</b></p> <p>The <i>Contractor</i> submits the conditions of contract for each subcontract to the <i>Project Manager</i> 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 <i>Contractor</i> 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 <i>Contractor</i> does not make payment of</li> <li>• any amount due and payable by him to a <i>Subcontractor</i> ("the Subcontractor Debt") and the <i>Project Manager</i> considers that the Subcontractor debt adversely impacts on the progress of the Works or the obligations of the <i>Contractor</i> under the contract, <i>Project Manager</i> requests evidence of payment to the Subcontractor. In the absence of such evidence, the <i>Employer</i> 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 <i>Contractor</i> and at the request of and with the approval and consent of the <i>Contractor</i>, as a payment towards the Prices.</li> <li>• Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.</li> </ul>
<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>	
<b>27.4</b>	<p>Clause 27.4 is deleted in its entirety and replaced with the following:</p> <p><b>Health and Safety specification</b></p>



27.4.1	The <i>Contractor</i> takes all reasonable steps and precautions to assess the Site, consider and receive all relevant information on the Site and health and safety related to the <i>works</i> , maintain the health and safety of persons in and about the execution of the <i>works</i> .
27.4.2	The <i>Contractor</i> acknowledges that the Occupational Health and Safety Act No. 85 of 1993 and the regulations promulgated therein ("the Act"); and the Construction Regulations 2014 promulgated under the Act, (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 <i>Contractor</i> as the "Principal Contractor" (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 Contractor" 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	The <i>Contractor</i> shall appoint a full time SACPCMP Registered Construction Health & Safety Officer for the Works and all other site-specific appointments as per Legislation requirements.
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 OHS 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</li> </ul>
27.4.7	The <i>Contractor</i> acknowledges that the <i>Project Manager</i> 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 2014) 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, and 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 (Pr. CHSA SACPCMP) Construction Health and Safety Agent will be appointed by the <i>Contractor</i> for the Project and that the Prices includes a sufficient amount 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 <i>Contractor</i> and/or Subcontractor and/or their employees.
27.4.11	The <i>Contractor</i> shall notify the <i>Project Manager</i> 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 <i>Project Manager</i> shall, at all times during construction and for a period of 5 (five) years after Completion, have the right to access and inspect any part of the Site/ <i>works</i> and all documents, reports, designs, specifications whatsoever that are prepared pursuant to any clause of this contract.
27.4.13	The <i>Contractor</i> liaises with the <i>Employer</i> and the <i>Project Manager</i> 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 <i>Project Manager</i> .
27.4.14	The <i>Contractor</i> complies with the Baseline Risk Assessment provided by the <i>Employer</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>51.2</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>	Add the following new clauses after clause 51.4.
<b>51.5</b>	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.
<b>51.6</b>	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.
<b>51.7</b>	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>	
<b>61 Notifying compensation events</b>	
<b>61.3</b>	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> ",  Amend the last paragraph of the core clause 61.3 to read  " <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> ".
<b>62.3</b>	Add to core clause 62.3,  " <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> "
<b>62.5</b>	Add to core clause 62.5,

	<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>
<b>9 Termination</b>	
<b>91.1</b>	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":  <i>"or the Contractor commits a Contractor Insolvency Event (R5),"</i>
<b>91.2</b>	Amend this clause sub-bullet point two (R12) to read as follows:  <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>
<b>91.3</b>	Amend this clause by adding the following at the end of the clause:  <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>
<b>91.8</b>	Add a new core clause 91.8 as follows:  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. The same procedures on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply. The Contractor shall only be entitled to costs incurred at the date of termination.

Option X2: Changes in the Law	
X2.2	<p>Amend this clause by the addition of the following new clause:</p> <p>Notwithstanding anything contained in this clause or this agreement, a “change in law” does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged.</p>
Option X13: Performance Bond	X13: Amend this clause by adding the following new clause at the end of this clause: (if applicable in this contract)
X13.2	<p>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:</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>
X13.3	<p>The <i>Employer</i> may make a claim under the performance bond, for amounts to which the <i>Employer</i> is entitled under the contract in the event of:</p> <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>
<b>Z1.2.1</b>	<p>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</p> <p>"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.</p>
<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.
<b>Z5</b>	<b>Ethics</b>
	<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>
	A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof
	<p>The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the <i>works</i> if a Committing Party has taken a Prohibited Action and the <i>Contractor</i> did not take timely and 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 Services for this reason.</p> <p>If the <i>Employer</i> terminates the <i>Contractor's</i> obligation to Provide the <i>works</i> for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.</p>
	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.



	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).
	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 Service 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 <i>Employer</i> .
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
<b>Z9</b>	<b><i>Employer's limitation of liability</i></b>
Z9.1	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> 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 <i>Contractor's</i> 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 <i>Employer</i> 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 <i>Employer</i> shall be entitled to, within 2 (two) Business Days of the giving of notice to the <i>Contractor</i> to such effect, conduct an audit of all relevant books, records, systems, processes, procedures and documents of the <i>Contractor</i> in order to verify compliance by the <i>Contractor</i> with its obligations in terms of this contract and/or to assess any entitlement or claimed entitlement of the <i>Contractor</i> under this contract or to investigate any allegations with regard to possible criminal activities or breach of DBSA policies or procedures.
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 <i>works</i> 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 <i>works</i> (as the case may be).

Z13.4	The <i>Contractor</i> shall ensure that the rights in this clause 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 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 <i>Contractor</i> for or in connection with the <i>works</i> vests in the <i>Employer</i> on creation and the <i>Contractor</i> hereby cedes and assigns all such rights to the <i>Employer</i> with effect from the date of creation vesting such Intellectual Property in the <i>Employer</i> .
Z14.2	The <i>Employer</i> grants the <i>Contractor</i> a revocable license to use the Intellectual Property for the purposes of Providing the <i>works</i> for the contract period.
Z14.3	Unless otherwise agreed by the Parties, the <i>Contractor</i> grants to the <i>Employer</i> 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 <i>works</i> 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.
Z14.5	If the <i>Employer</i> is prevented from receiving the <i>works</i> or any part thereof as a result of any actual or alleged infringement of Intellectual Property rights, the <i>Contractor</i> must, at its cost, take all reasonable steps necessary to procure for the <i>Employer</i> the right to receive the <i>works</i> or the relevant part thereof for its intended purpose.
Z14.6	<b>Modification or replacement of the Works</b>  If the <i>Contractor</i> fails to procure the necessary rights in accordance with this clause within a reasonable time, the <i>Employer</i> may direct the <i>Contractor</i> , at the <i>Contractor's</i> cost, to promptly (i) amend the <i>works</i> or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with <i>works</i> that do not infringe Intellectual Property rights.

## 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:

- a. 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**.
- b. 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:**

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)<sup>3</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.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

**Statements given  
in all contracts**

- 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 .....  
.....  
.....

**Optional  
statements**

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

.....  
.....  
.....  
.....

**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.....

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

- The *Pricing Schedule* is .....

- 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

Capacity of Guarantor

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

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 B:** Priced Contract with *Bill of Quantities* of April 2013 (including amendments).

Document reference	Title	No of pages
C2.1	Pricing Assumptions: Option B	4
C2.2	Pricing Instructions	1
C2.3	The Bill of Quantities	1
C2.4	Amendments, Qualifications and Alternatives by Tenderer	1
	Total number of pages	7

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

### **The conditions of contract**

### **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 pricing schedule as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.</p> <p>(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations 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 Pricing Schedule multiplied by the rate and</li> <li>a proportion of each lump sum which is the proportion of the work covered by the item which the Contractor has completed.</li> </ul> <p>Completed work is 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 Pricing Schedule.</p>
<b>Acceleration</b>	36 36.3	When the Project Manager accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly, and accepts the revised programme, provided that the acceleration does not arise as a result of the Contractor's own doing.
<b>The Bill of Quantities</b>	55 55.1	Information in the Pricing 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 Pricing Schedule is a compensation event if</p> <ul style="list-style-type: none"> <li>the difference does not result from a change to the Work Information,</li> <li>the difference causes the Defined Cost per unit of quantity to change and</li> <li>the rate in the Pricing 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 Pricing 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 Pricing 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 Pricing Schedule and another document, the Contractor is assumed to have taken the Pricing 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 Pricing Schedule.</p> <ul style="list-style-type: none"> <li>• For the whole or a part of a compensation event for work not yet done and for which there is an item in the Pricing Schedule, the changes are <ul style="list-style-type: none"> <li>• a changed 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 Pricing 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 Pricing Schedule have been drawn up in accordance with the Standard System of Measuring Building Work (as amended) published and issued by the Association of South African Quantity Surveyors (Sixth Edition (Revised)), 1999. Where applicable the:
  - a) Civil engineering work has been drawn up in accordance with the provisions of the latest edition of SABS 1200 Standardized Specifications for Civil Engineering Works.
  - b) electrical work has been drawn up in accordance with the provisions of the Model Bills of Quantities for Electrical Work, published by the South African Association of Quantity Surveyors, (July 2005).
2. The agreement is based on the NEC 3 Engineering and Construction Contract Option A: Priced Contract with *Pricing Schedule*. The additions, deletions and alterations to the NEC 3 Engineering and Construction Contract as well as the contract specific variables are as stated in the Contract Data. Only the headings and clause numbers for which allowance must be made in the Pricing Schedule are recited.
3. Preliminary and general 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. Only the headings and clause numbers for which allowance must be made in the Pricing Schedule are recited.
4. The drawings listed in the Scope of Works used for the setting up of these Pricing Schedule are kept by the Project Manager and can be viewed at any time during office hours up until the completion of the works.
5. 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.
6. Where any item is not relevant to this specific contract, such item is marked N/A (signifying "not applicable")
7. The Contract Data and the standard form of contract referenced therein must be studied for the full extent and meaning of each and every clause set out in Section 1 (Preliminaries) of the Pricing Schedule.
8. The Pricing Schedule is not intended for the ordering of materials. Any ordering of materials, based on the Pricing Schedule, is at the Contractor's risk.
9. The amount of the Preliminaries to be included in each monthly payment certificate shall be assessed as an amount prorated to the value of the work duly executed in the same ratio as the preliminaries bears to the total of prices excluding any contingency sum, the amount for the Preliminaries and any amount in respect of contract price adjustment provided for in the contract.
10. Where the initial contract period is extended, the monthly charge shall be calculated on the basis as set out in 10 but taking into account the revised period for completing the works.
11. The amount or items of the Preliminaries shall be adjusted to take account of the theoretical financial effect which changes in time or value (or both) have on this section. Such adjustments shall be based on adjustments in the following categories as recorded in the Pricing Schedule:
  - a) an amount which is not to be varied, namely Fixed (F)
  - b) an amount which is to be varied in proportion to the contract value, namely Value Related (V); and
  - c) an amount which is to be varied in proportion to the contract period as compared to the initial construction period excluding revisions to the construction period for which no adjustment to the contractor is not entitled to in terms of the contract, namely Time Related (T).

12. Where no provision is made in the Pricing Schedule to indicate which of the three categories will apply or where no selection is made, the adjustments shall be based on the following breakdown:
- a) 10 percent is Fixed;
  - b) 15 percent is Value Related
  - c) 75 percent is Time Related.
13. The adjustment of the Preliminaries shall apply notwithstanding the actual employment of resources in the execution of the works. The contract value used for the adjustment of the Preliminaries shall exclude any contingency sum, the amount for the Preliminaries and any amount in respect of contract price adjustment provided for in the contract. Adjustments in respect of any staged or sectional completion shall be prorated to the value of each section.
14. CPAP shall only be applicable to works that progress to later than twelve (12) months from commencement date. Where the period is prolonged beyond the first twelve months due to the delay or non- performance by the employer, the CPAP shall be applicable; however, where the period is extended due contractor's failure to perform or delay caused by the contractor CPAP shall not be applicable. The contract value is to be adjusted using CPAP indices. The base month to be used to calculate CPAP is tender closing date. The value of the certificates issued shall be adjusted in accordance with the NEC3 Contract Price Adjustment Schedules, from the thirteenth month of the works.

## **C2.3 PRICING SCHEDULE**

Use this page as a cover page to the *Contractor's Pricing Schedule*.

- 1) Tenderers are to ensure that adequate provision for the health and safety measures have been and provided detailed breakdown in the *Pricing Schedule*, as required by the Department of Labour.
- 2) The PDF/ original format *Priced Schedule* must be populated by hand in black ink and will be the document used for evaluation purposes.
- 3) Tenderers are also required to electronically populate the Excel format and add to the required electronic Drive with your submission. This will be used to support verification of pricing errors.

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: Pricing Schedule**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	Employers Works Information	4
C3.2	Contractors Works Information	17
C3.3	Particular Specifications	1
C3.4	Drawings	1
	Total number of pages	24

### **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)
Design and Construction of Houses	Generic Specification GFSH – 11
Lightning Protection	SANS 10200:1985.
Lightning Protection	SANS 61024 – Protection of structures against lightning.
Lightning Protection	SANS 62305 – Earthing and Lightning Protection.
Lightning Protection	SANS 10313:2008 Protection against lightning – Physical damage to structures and life Hazard.
Earthing and Grounding	SANS 10292:2001
Control and Monitoring System	R842: Government Gazette, 8 August 2008
Quality	SANS 9001/150 9001 – Quality Management Standard
Quality	Standard for Quality Management Systems (ISO) 9001:2015
Safety	Occupational Health and Safety Act, Act No. 85 of 1993 including, but not limited to, all applicable and relevant legislation, requirements, standards and code of practices.
SANS 347:2012	Categorization and conformity assessment criteria for all pressure equipment.
Health	National Norms and Standards relating to Environmental Health in terms of National Health Act, 2003 (Act Nr 61 of 2003)
General	Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2022.

- 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 concluded a Memorandum of Agreement (MoA) with the Eastern Cape Department of Education (ECDOE) in 2015/2026 financial year. The recent extension of this MoA was in September of 2024 and is valid until March of 2028.

The aim of this MoA is to carry out the full implementing agent role for contracting and managing the for the Design and construction of Lurhwayizo SSS on behalf of the Easter Cape Department of Education.

The primary objective is to procure the services of a suitably experienced contractor to execute Design and construction of Lurhwayizo SSS, Amathole East District, Eastern Cape Province. The contractor will report and provide support to the Employer regarding the implementation of the project.

The contractor will also be responsible for the Health and Safety compliance, building regulations standards compliance, scheduling and estimation, quality control and assurance, warrantee and guarantees as detailed in the Tender Scope.

#### **3.2.2 Overview of the works/Scope of Works**

The employer aims to Design and construct Lurhwayizo SSS, at Amathole East District, Eastern Cape Province. The Works to be carried out by the Contractor will comprise mainly of the following:

The works comprise installation of new prefabricated buildings which include 5 classrooms, 1 administration building, 1 library, 1 science laboratory, staff and leaners ablution facilities.

Construction of new security fence, parking bays, paved areas and walkways.

Engineering services will be installed around and in the new buildings, which include, electricity, water, sewer, fire protection and storm water control. All the services will connect to existing or new services that run on site.

<b>NUMBER</b>	<b>FACILITY TYPE</b>
1	Administration Block
5	Classrooms
1	Science Laboratories
1	Library
1	Computer Room
1	Dining & Nutrition Centre
1	Education Support spaces consist of five (5) storage areas
1	Multipurpose Room
3	Ablution Blocks
5	Temporary Prefabricated Classrooms for Decanting
2	Flage poles and one (1) school signage
1	Guard House



**ADDITIONAL WORKS INCLUDES THE FOLLOWING:**

- Earthworks
- Civil Works
- Electrical Works
- Mechanical Works
- Stormwater Management
- Water Supply and reticulation
- Parking
- Landscaping
- Courtyard
- Fencing
- Assembly area. ETC

**Building Work**

- All the buildings consists mainly of prefabricated structure are on concrete raft foundations. The provision of 5 new prefabricated structures should sit on jacks as these will be temporary structures for decanting

**External Works**

- Site works are mainly bulk earthworks, walkways, court yards, landscaping and paving adjacent to the buildings, water supply, sewerage, stormwater, two combi-courts, boundary fence, gates, etc.

**Electrical Installation**

- Electricity Bulk Supply 100kVA
- General electrical installation, distribution and reticulation

**Mechanical Installation**

- The Domestic Cold Water Supply
- Air conditioning and Ventilation in designated areas
- Fire protection system including hydrants, hose reels and fire extinguishers
- LP gas installation
- Water pumps and Storage tanks

**Structural Engineering**

- Foundation Systems and elements.
- Surface beds
- Water Base
- Plinth

### **3.2.3 Site Access**

The site location is as indicated in Part 4 of this document. Access to the site is along Dwesa Coast, Amathole East, Eastern Cape Province, and the roads is purely gravel till you reach Lurhwayzo SSS.

Access to private property requires the owners' permission, and the Contractor must contact relevant parties to ensure that the necessary permission is obtained before any work commences on the various properties. Permission to Occupy forms will be made available to the Contractor to record owners' approval for access to private property.

The Contractor shall indemnify the Client and the property owners against any damages or claims arising from the Contractor or his agents/deliveries using any tracks and rights of way.

The Contractor shall consider the items mentioned above, as well as other landowners' requirements, and allow for any costs in his tender under the relevant section in the Pricing Schedule.

### **3.2.4 Existing services**

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

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

All known existing services and those services which require relocation and protection, are shown on the services plans. The Contractor's attention is drawn to the fact that such services information is based on information supplied by others, and the accuracy and completeness of this information has not been confirmed. The Contractor will therefore be required to proceed with extreme caution in order to avoid damage to existing services. Before commencing any work in the vicinity of services, the Contractor shall contact the relevant service authorities for assistance in locating the exact position of the services and where necessary the Contractor shall accurately locate the services by careful hand excavation.

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

### **3.2.5 Maintenance works**

The Contractor shall be responsible for maintaining existing classroom blocks and existing toilets from the date the site is handed over until the date the certificate of completion of the Works is issued.

### **3.4 DEVELOPMENT FACILITATION**

- The Contractor is expected to engage meaningfully and intensively with stakeholders such as the local community leadership, the DBSA, ECDOE, 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 ECDOE 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.

### **3.5 MANDATORY REQUIREMENTS AND GENERAL SPECIFICATIONS**

Considerations of sustainable building practices such as rainwater harvesting, water conservation and reuse need to be considered.

The contractors will gather their own professional teams for the execution of the projects in accordance with the DBSA SCM policies and Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its Regulations as published in the Government Gazette No. 47452 of Vol. 689 4 November 2022.

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:

- Facilitate the tender process and briefing session,
- Evaluate bids and make recommendations,
- Procure, appoint, and manage the Contractor,
- Manage and oversee the works by the Contractor during implementation
- Oversight on safety, health, environment, and quality audits and liaise with the ECDOE for handover of the Facility,
- Conduct regular meetings with the Contractor
- Report at regular meetings held by ECDOE
- Oversee execution of the works
- Conduct site, practical, works and final completion inspections
- Continuous engagement with relevant stakeholders
- Close projects

### **Definition of pricing**

- The Bidder / Supplier / Contractor must quote in full for the design and construction of the administrative 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 Employment and 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.

### **Contingency**

Allowance of 10% overall for scope of works (to remain the Client's).

### **Note: Successful bidder to take note of the following:**

- Successful bidder will accept responsibility for design for suitability and fit for purpose;
- All equipment is to be commissioned and fully operational to meet design/operational requirements;
- Prior approval of planned downtime during construction is required;

### **Recording of weather**

The Contractor shall erect an effective rainfall gauge on the site and record the daily rainfall figures in a book. Such book shall be handed to the employer's representative for his signature no later than 1 day after rain that is considered to justify a compensation event occurs, but such signature is not an acknowledgement by the Employer that the event is a compensation event.

### **Unauthorised persons**

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

### **Management meetings**

A Schedule of meetings will be agreed with the contractor.

### **Daily records**

The Contractor is instructed to keep a set of signed-off daily diaries.

### **Payment certificates**

Monthly valuations of completed work, including materials on site is to be completed and presented to the client representative by no later than the 20<sup>th</sup> of each month to be assessed for payments. The payment certificate will be issued no later than the 25<sup>th</sup> of each month (Including Contractor's tax invoice) to the Project Manager or Supervisor for payment within 30 calendar days. Notwithstanding the above, the Employer may request the Contractor to submit claims every 2 weeks to foster better cash flow for the Contractor.

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

- The bidder is responsible for all 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 Pricing Schedule priced for all items and complete for ease of evaluation, and work management.
- 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 at 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 Contract to be used for the construction of the works shall be NEC3 Engineering and Construction Contract Option A: Pricing Schedule.
- The successful bidder is expected to conclude and sign the NEC3 Engineering and Construction Contract Option A: Pricings Schedule prior to commencement of work.
- Should both the bidder and employer not reach agreement with respect to content, context, and legal framework of the NEC3 Engineering and Construction Contract Option A: Pricing Schedule, the employer reserves the right to withdraw the appointment.

### **3.7 OCCUPATIONAL HEALTH AND SAFETY**

The Contractor needs to comply with the following legal requirements:

- Occupational Health and Safety Act, Act No.85 of 1993, (latest edition), including, but not limited to, all applicable and relevant legislation, requirements and standards.
- Code of Practice: Managing exposure to SARS-CoV-2 in the workplace
- DBSA Health and Safety Baseline Specifications
- DBSA Baseline Risk Assessment
- DBSA SHEQ Policy

- Annexure D - ECDOE Particular Specifications

### **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>
Health and Safety Baseline Specification	Annexure A
Baseline Risk Assessment	Annexure B
DBSA SHEQ Policy	Annexure C
ECDOE PARTICULAR SPECIFICATIONS	Annexure D

## **C3.4 DRAWINGS**

### **3.4.1 TENDER DRAWINGS**

The drawings which will be utilised as a guide will be prototype Drawings from DBE and will be provided. The appointed Turnkey Contractor will modify the prototype Drawings and not re-design and SDP will be approved by ECDOE



## **PART 4: SITE INFORMATION**

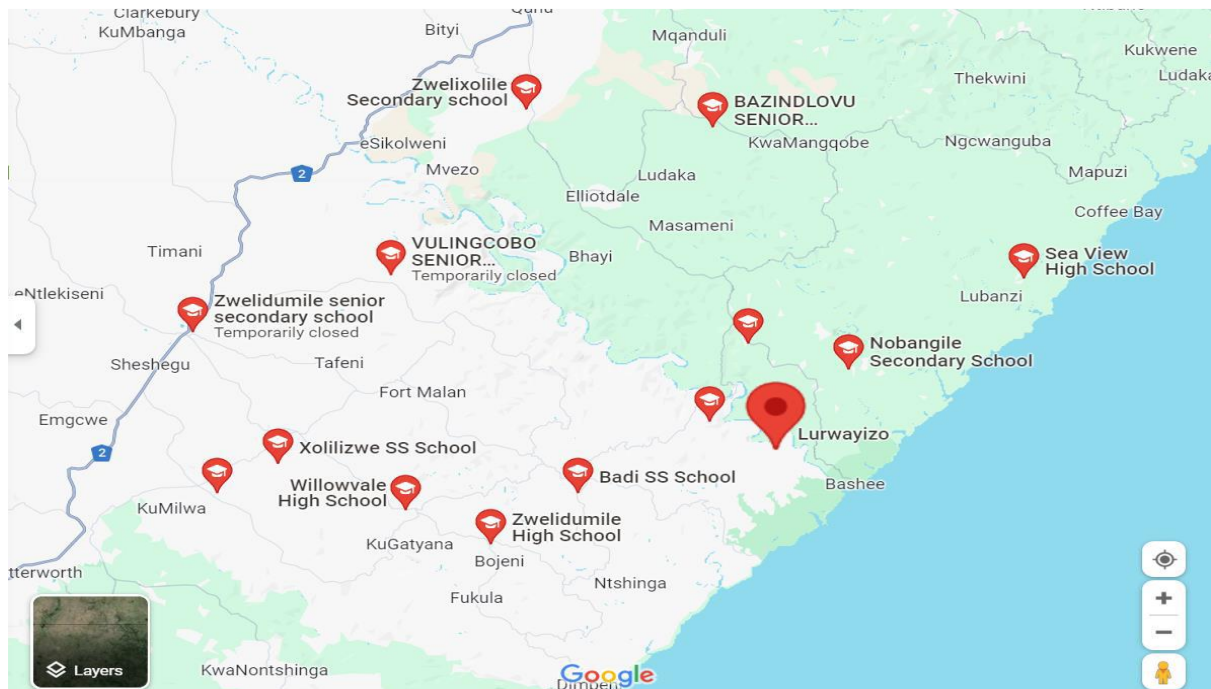
<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C4.1	<i>Locality Plan</i>	1
	Total number of pages	2

## **C4.1 LOCALITY PLAN**

The site is located within the Amathole East District in the Eastern Cape Province. The site is near Dwesa Coast. The coordinates of the site are as follows:

Table 1: Geographical Coordinates

Name	Latitude	Longitude
Lurhwayizo SSS	32 12' 40" S	-28 50' 19" E



**Figure 1: Lurhwayizo SSS, Locality Map**