



## **THE CONTRACT**

### **NEC 3 Term Service Contract**

#### **Option A: Priced Contract with Price List of April 2013 (including amendments)**

#### **TENDER NO. RFP 081/2026**

**APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISION OF CRANE SERVICES INCLUDING THE SUPPLY, OPERATION AND MANAGEMENT OF CRANE EQUIPMENT FOR LIFTING, POSITIONING AND INSTALLATION ACTIVITIES AS INSTRUCTED OR SCHEDULED FOR THE CONSTRUCTION OF TZANEEN DAM**



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## **THE CONTRACT**

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

## PART 1: AGREEMENT AND CONTRACT DATA

### 1. NEC 3 Term Service Contract Option A: Priced Contract with Price List of April 2013 (including amendments)

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

## C1.1 FORM OF OFFER AND ACCEPTANCE

### C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: **CONTRACT No: RFP 081/2026 APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISION OF CRANE SERVICES INCLUDING THE SUPPLY, OPERATION AND MANAGEMENT OF CRANE EQUIPMENT FOR LIFTING, POSITIONING AND INSTALLATION ACTIVITIES AS INSTRUCTED OR SCHEDULED FOR THE CONSTRUCTION OF TZANEEN DAM**

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

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

The offered total of the Prices exclusive of VAT is	
Value Added Tax @ <b>15%</b> is	
The offered total of the amount due inclusive of VAT is	
(in words)	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Tenderer before the end of the period of validity stated in the Tender Data or issue a conditional Letter of Acceptance subject to certain conditions which must be fulfilled prior to final acceptance and signing of the acceptance part of this form, whereupon the Tenderer becomes or may become the party named as the *Tenderer* in the *Conditions of Contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

### For the Tenderer:

Name of Tenderer: \_\_\_\_\_

Address of Tenderer: \_\_\_\_\_

Name of witness \_\_\_\_\_

Signature of witness \_\_\_\_\_ Date \_\_\_\_\_

## **C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)**

### **C1.1.2 Acceptance**

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

The terms of the contract, are contained in:

- Part C1: Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2: Pricing data
- Part C3: Scope of work.
- Part C4: Site information

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

**Development Bank of Southern Africa Limited**  
1258 Lever Road, Headway Hill,  
Midrand, Gauteng Province

Name of witness .....

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

## Schedule of Deviations

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

A Tenderer's covering letter will not necessarily be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

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

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

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

1 Subject .....

Details .....

.....

.....

2 Subject .....

Details .....

.....

3 Subject .....

Details .....

.....

.....

4 Subject .....

Details .....

.....

.....

5 Subject .....

Details .....

.....

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

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

**For the Tenderer:**

Signature(s) .....

Name(s) .....

Capacity .....

Name of Tenderer .....

Address of Tenderer .....

Name of witness .....

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

**For the Employer:**

Signature(s) .....

Name(s) .....

Capacity .....

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

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

Name of witness .....

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



## C1.2 CONTRACT DATA

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

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

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

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

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

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

Clause	Statement	Data
<b>1</b>	<b>General</b>	
	The <i>conditions of contract</i> are  the core clauses and the clauses for main Option:	<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	<b>X1: Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>X18: Limitation of liability</b>
		<b>X19: Task Order</b>
		<b>Z: Additional <i>conditions of contract</i></b>
	of the NEC3 Term Service Contract (April 2013)	

10.1	The <i>Employer</i> is (name)	the Development Bank of Southern Africa Limited, acting through its Infrastructure Delivery Division (the “IDD”), a juristic person reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act No 13 of 1997 (the “DBSA”);
	Address	To be indicated at contracting
	Represented by	To be indicated at contracting
	Tel No.	To be indicated at contracting
10.1	The <i>Service Manager</i> is (name)	To be indicated at contracting
	Address	To be indicated at contracting
	Tel No.	To be indicated at contracting
11.2(2)	The <i>Affected Property</i> is	To be indicated at contracting
11.2(13)	The <i>service</i> is	THE PROVISION OF CRANE SERVICES INCLUDING THE SUPPLY, OPERATION AND MANAGEMENT OF CRANE EQUIPMENT FOR LIFTING, POSITIONING AND INSTALLATION ACTIVITIES AS INSTRUCTED OR SCHEDULED FOR THE CONSTRUCTION OF TZANEEN DAM
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 Service Information is in	Part 3: Scope of Work and all documents to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa

13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	5 Days
2	The <i>Contractor's</i> main responsibilities	Data required in this section of core clauses is also provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>1 (one) week</b> of the Contract Date
3	Time	
30.1	The <i>starting date</i> is	TBC at contracting
30.1	The <i>service period</i> is	16 (sixteen) calendar months from the <i>starting date</i>
4	Testing and defects	
	The defects date is	N/A  Where there is a defect in the crane, the defect correction period is 1 (one) day;  The defect correction period for major defects is 2 (two) days.
5	Payment	
50.1	The <i>assessment interval</i> is	<b>20<sup>th</sup></b> of each month
51.1	The <i>currency of this contract</i> is	South African Rand
51.2	The period within which payments are made is	4 (four) weeks after receipt of a valid invoice.

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(15)	The place where weather is to be recorded is	<b>The closest weather station to site.</b>
	The <i>weather measurements</i> to be recorded for each calendar month are,	the cumulative rainfall (mm), the number of days with rainfall more than 10 mm, the number of days with minimum air temperature less than 0 degrees Celsius, the number of days with snow lying at <b>+2</b> hours GMT;
		hours South African Time, and these measurements; hourly wind direction and windspeeds
	The <i>weather measurements</i> are supplied by	<b>The closest weather station to site.</b>
	The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at	<b>The closest weather station to site.</b>
	and which are available from	the South African Weather Bureau
7	Use of Equipment Plant and Materials	No data is required for this section of the conditions of contract.
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	N/A

83.1	The <i>Contractor</i> provides these additional insurances:	<ul style="list-style-type: none"> <li>The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (<b>SASRIA</b>).</li> <li>Comprehensive Public liability Insurance from a registered insurance company or financial service provider in an amount of not less than <b>R10 000 000.00 (Ten Million Rand)</b> in respect of each and every claim during the contract period, with no limitation on the number of claims or cumulative value of claims.. The insurance must be issued by an insurance company or financial service provider duly registered in terms of the Short-Term Insurance Act, 1998 (Act 53 of 1998) or the Long-Term Insurance Act, 1998 (Act 52 of 1998).</li> <li>Comprehensive Professional Indemnity Insurance from a registered insurance company or financial service provider in an amount of not less than <b>R10 000 000.00 (Ten Million Rand)</b> in respect of each and every claim during the contract period, with no limitation on the number of claims or cumulative value of claims to the extent that the Contractor will be required to design in terms of the Service Information. The insurance must be issued by an insurance company or financial service provider duly registered in terms of the Short-Term Insurance Act, 1998 (Act 53 of 1998) or the Long-Term Insurance Act, 1998 (Act 52 of 1998).</li> </ul>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	the total of the Prices plus 10%
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Contractor</i>	Insured sum is the total of the Prices plus 10%

83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 199 and the <i>Contractor</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims
9	Termination	There is no Contract Data required for this section of the <i>conditions of contract</i> .
10	<b>DATA FOR MAIN OPTION CLAUSE</b>	
A	Priced contract with price list	
11	<b>DATA FOR OPTION W1</b>	
W1.1	The <i>Adjudicator</i>	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	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator  if the Parties cannot agree a choice or  if the arbitration procedure does not state who selects an arbitrator, will be	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	<b>DATA FOR SECONDARY OPTION CLAUSES</b>	
X1	Price adjustment for inflation	
X1.1	The <i>base date</i> for indices is	<b>No price adjustment allowed</b>



	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	[•]
	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).		
X2	Changes in the law	No data is required for this Option		
X13	Performance bond			
X13.1	The amount of the performance bond is	being an on-demand Guarantee issued by any South African Banking Institution duly registered in terms of the Banks Act 94 of 1990 (as amended) or an insurance company duly registered in terms of short-term insurance Act 53 of 1998 (as amended) fixed to the value of 10% of the total of the Price at Contract Date, reducing to five percent (5%) of the contract Price when the Contractor achieves Completion and expires 1 month after the service period as extended.		
X18	Limitation of liability			
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss, including loss of profit and revenues is limited to:	R0-00 (Zero Rand)		
X18.2	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 damage incurred by the <i>Employer</i>		

X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to:	cost of the repair or reinstatement of property to original standard.		
X18.4	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 the excluded matters, is limited to:	total of the Prices as at the <i>start date</i>		
X18.5	The <i>end of liability date</i> is	12 (twelve) months after the end of the <i>service period</i>		
X19	Task Order			
X19.3	The amount for delay damages for late completion of the <i>service</i>	Task Order	Description	Delay damage amount per day of the Task

		As issued	As issued	<p>The Contractor shall be liable for delay damages to the total of 3% of the Prices for the Task Order per day up to 10% of the total of the Prices of the Task Order for any delays caused or attributed to the Service Provider.</p> <p>Thereafter, the <i>Employer</i> shall have a right during the identified delay period to intervene and accelerate the <i>service</i> or appoint a third party to assist or complete the <i>service</i> to reach Task Completion at the planned period. The cost of the appointed third party work shall be borne by the <i>Contractor</i>.</p>
	The total delay damages payable by the <i>Service Provider</i> does not exceed	10% of the combined Prices of the issued Task Orders.		
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	5 days of receiving the Task Order		
Z15	Delay Damages in respect of non-operational crane caused /attributed to the <i>Contractor</i>	<p>The <i>Contractor</i> shall be liable for delay damages to the total of 3% of the Prices per day up to 10% of the total of the Prices, excluding contingency, for any delays caused or attributed to the <i>Contractor</i> .</p> <p>The <i>Contractor</i> is afforded a period of 24 (twenty-four) hours from becoming aware of, or being notified of, such fault, defect, or failure to remedy the issue and restore the crane to full operational capacity, failing which the <i>Employer</i> shall levy delay damages until the crane is operational or a replacement is obtained and commissioned.</p> <p>Thereafter, the <i>Employer</i> shall have a right during the identified delay period to intervene and accelerate the service or appoint a third party to assist or complete the service at the planned period. The cost of the appointed third party work shall be borne by the <i>Contractor</i>.</p>		

	<b>PART A – Additional Definitions</b>
	<p>Add the following new definition as clause 11.2(20):</p> <p>“A <b>Contractor Insolvency Event</b> means and is considered to occur if:</p> <ul style="list-style-type: none"> <li>the <i>Contractor</i> 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;</li> <li>the <i>Contractor</i> 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;</li> <li>the <i>Contractor</i> makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally);</li> <li>a court of competent jurisdiction grants an order winding-up the <i>Contractor</i> (whether provisionally or finally) or makes an order placing the <i>Contractor</i> under business rescue supervision;</li> <li>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 <i>Contractor</i> (whether provisionally or finally) or placing the <i>Contractor</i> 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</li> <li>a resolution is passed by: <ul style="list-style-type: none"> <li>the shareholders of the <i>Contractor</i> for the winding-up of the <i>Contractor</i>, whether by way of a members' or creditors' voluntary winding-up; or</li> <li>the board of the <i>Contractor</i> for the <i>Contractor</i> to voluntarily begin business rescue proceedings and place himself under business rescue supervision.”</li> </ul> </li> </ul>
	<p>Add the following new definition as clause 11.2(21):</p> <p>“<b>Temporary Services</b> is all temporary services of every kind required on site for the execution and Completion of the <i>services</i> and the remedying of any defects.”</p>

	<p>Add the following new definition as clause 11.2(22):</p> <p><b>“Intellectual Property”</b> 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, semiconductor 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,</p>
	<b>AMENDMENTS AND ADDITIONS TO EXISTING CORE AND OPTIONAL CLAUSES</b>
	<p>Added the following clauses after clause 12.4</p> <p>“Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Service Manager</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>
12.5	Words denoting persons or parties shall include individuals and any organisation having legal capacity.
12.6	<p>In this contract, except where the context requires otherwise:</p> <ul style="list-style-type: none"> <li>provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and;</li> </ul> <p>"written" or "in writing" means hand-written, type-written, printed or electronically mail, and resulting in a permanent record.</p>
12.7	<ul style="list-style-type: none"> <li>The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the conditions of contract.</li> </ul> <p>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.</p>

12.8	<p>Week means a continuous period of 7 days.</p> <p>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.</p>
12.9	<p>Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.</p>
12.10	<p>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.</p>
12.11	<p>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.</p>
<b>23 Design of Equipment</b>	<p>Add the following new clauses at the end of clause 23.1:</p> <p>23.2 The <i>Contractor</i> designs the parts of the works which the Service 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 Service Information. Ten (10) days before instituting any designs the <i>Contractor</i> shall provide to the <i>Employer</i>, Professional Indemnity Insurance covering each of the professionals.</p>
<b>23.2</b>	<p>The <i>Contractor</i> 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 they and the Works shall be corrected at the <i>Contractor's</i> cost, notwithstanding any consent or approval, under this clause.</p>

23.4	23.4 The <i>Contractor</i> submits the particulars of his design as the Service Information requires to the <i>Service Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Service Information or the applicable law. The <i>Contractor</i> does not proceed with the relevant work until the <i>Service Manager</i> has accepted his design.
25.4	<p>The <i>Employer</i> 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 <i>Contractor</i>, from the <i>Employer</i> or otherwise, shall not relieve the <i>Contractor</i> from his responsibility for the design and execution of the Works.</p> <p>However, the <i>Employer</i> 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 <i>Employer</i>:</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 <i>Contractor</i> except as otherwise stated in the Contract.</li> </ul>
23.6	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.
23.7	<p>The <i>Contractor</i> 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 <i>Contractor</i> 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 Service Provider's Documents. The <i>Contractor</i> shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.</p>

23.8	The <i>Employer</i> may use and copy the <i>Contractor's</i> design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Service Information and for other purposes as stated in the Service Information.
<b>Working with the Employer and Others</b>	Add the following new clauses at the end of clause 25.2:
25.3	The <i>Contractor</i> acknowledges that DWS Construction North (Pty) Ltd is the Main Contractor appointed by the <i>Employer</i> for the construction works at the Tzaneen Dam. The <i>Contractor</i> Provides the Service for and on behalf of the Main Contractor as stated in the Service Information
25.4	The <i>Contractor</i> liaises with the Main Contractor when preparing the plan and ensures that the plan is aligned with the programme and activities of the with the Main Contractor.
25.5	In Providing the Service, the <i>Contractor</i> co-operates with the Main Contractor, complies with reasonable instructions issued by the Main Contractor relating to the Service and allows for the Service to be supervised by the Main Contractor as stated in the Service Information.
25.6	If an instruction from the Main Contractor would result in a change to the Prices, the <i>Contractor</i> notifies the <i>Service Manager</i> before carrying out the instruction and does not proceed unless the <i>Service Manager</i> has given an instruction or acceptance allowing for the change in Prices in writing.
<b>26 Subcontracting</b>	
26.1	<p><b>Core clause 26.1 to be deleted and replaced as follows:</b></p> <p>The <i>Contractor</i> does not subcontract the whole or any part of the services 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 services, he is responsible for Providing the Service 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>



26.2	<p><b>Delete the first sentence of Core clause 26.2 and replace as follows:</b></p> <p>The <i>Contractor</i> submits the conditions of contract for each subcontract to the <i>Service Manager</i> and may redact all commercially sensitive information.</p>
26.3	<p><b>Delete Core clause 26.3 and replaced 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 <i>Contractor</i> may have under the subcontracts can be ceded and delegated to the <i>Employer</i>.</p>
26.4	<p><b>Add a new core clause 26.4 as follows:</b></p> <p>The <i>Service Manager</i> shall at its discretion request proof of payment amounts due and payable by the <i>Service Provider</i> to a Sub-Contractor Provider.</p> <p>If the <i>Contractor</i> does not make payment of any amount due and payable by him to a Subcontractor ("the Subcontractor Debt") and the <i>Service Manager</i> considers that the Subcontractor Debt adversely impacts on the progress of the Services or the obligations of the <i>Contractor</i> under the contract, <i>Service 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.</p> <p>Payment to the Subcontractor is conducted in terms of core clause 50.2 of the contract.</p>
26.5	<p><b>Add a new core clause 26.5 as follows:</b></p> <p>All adverse effects as a result of or arising from the Subcontractor Debt does not result in a compensation event.</p>
<b>27</b>  <b>Health, safety and the environment</b>	
27.4	<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>services</i> , maintain the health and safety of persons in and about the execution
27.4.2	The <i>Contractor</i> acknowledges that the Occupational Health and Safety Act No. 85 of 1993 and the regulations promulgated therein ("the Act"); and the Construction Regulations 2014 promulgated under the Act ("the Construction Regulations"), will in all respects be applicable to this contract and the <i>services</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 service of this contract.
27.4.5	The <i>Contractor</i> shall appoint a SACPCMP Registered Construction Health & Safety Officer for the services and all other site-specific appointments as per Legislation requirements.
27.4.6	<p>The <i>Contractor</i> confirms that it has received sufficient information about the Site and the services in order to:</p> <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> </ul> <p>be properly appointed in accordance with Section 37(2) of the Act</p>
27.4.7	The <i>Contractor</i> acknowledges that the <i>Service 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>services</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 Construction Safety Officer 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 sub-contractor and/or their employees.
27.4.11	The <i>Contractor</i> shall notify the <i>Service 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>services</i> performed under this contract.
27.4.12	The <i>Employer</i> and the <i>Service 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.

<b>5 Payment</b>	
51.2	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.
51.5	Within one week of receiving a payment certificate from the <i>Service 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 Services Information, showing the amount due for payment equal to that stated in the payment certificate.
51.6	If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.
51.7	The <i>Contractor</i> (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number on each invoice the <i>Contractor</i> submits for payment.
<b>61 Notifying compensation events</b>	
61.3	Delete the second bullet point in core clause 61.3 which reads " <i>the Service Manager has not notified the event to the Contractor</i> ",  <i>Amend the last paragraph of the core clause 61.3 to read</i>  <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>
62.3	<i>Add to core clause 62.3,</i>  <i>"The Service Manager's reply which is an acceptance of a quotation for a compensation event may require the due authority of the Employer."</i>

62.5	<p>Add to core clause 62.5,</p> <p><i>"The Service Manager notifies the Contractor if the Employer's authority is required and includes in his notification any extension to the period within which he is required to reply to the Contractor's quotation."</i></p>
<b>9 Termination</b>	
91.1	<p>Amend this clause by the addition of the following at the end of the second main bullet point, fourth sub-bullet point, after the words "against it":</p> <p><i>"or the Contractor commits a Contractor Insolvency Event (R5),"</i></p>
91.2	<p>Amend this clause sub-bullet point two (R12) to read as follows:</p> <p><i>"not provided an on-demand performance bond or guarantee which this contract requires and/or failed to renew on-demand performance bond or guarantee upon expiry (R12)".</i></p>
91.3	<p>Amend this clause by adding the following at the end of the clause:</p> <ul style="list-style-type: none"> <li>• <i>"failed to effect any of the required insurances(R22);</i></li> <li>• <i>failed to provide a satisfactory recovery plan pursuant to Clause 22 (The Contractor's recovery plan) (R23); or</i></li> <li>• <i>failed to comply with the provision of Clause Z3 (Broad Based Black Economic Empowerment) (R24).</i></li> </ul> <p>and for terminating for R22 to R24 the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply."</p>
91.8	<p>Add a new core clause 91.8 as follows:</p> <p>The <i>Employer</i> terminates if the <i>Contractor</i> 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.</p>
9.0	Insert the following new clause 9.4
<b>9.4 Termination for convenience</b>	<p>The <i>Employer</i> is entitled to terminate the Contract, at any time for the <i>Employer's</i> convenience, by giving notice of such termination to the <i>Contractor</i>. The termination shall take effect 28 days after the later of the dates on which the <i>Contractor</i> receives this notice or the <i>Employer</i> returns the performance bond and all monies held in retention, unless there are outstanding calls/claims thereon in which event, and if applicable, the <i>Employer</i> returns the performance bond and all monies held in retention promptly after the last of the outstanding calls/claims have been met. The <i>Employer</i></p>

	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 <i>Contractor</i> shall only be entitled to costs incurred at the date of termination.
<b>Option X2: Changes in the Law</b>	
X2.2	Amend this clause by the addition of the following new clause:  Notwithstanding anything contained in this clause or this agreement, a “change in law” does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged.
<b>Option X13: Performance Bond</b>	Amend this clause by adding the following new clause at the end of this clause: <b>(if applicable in this contract)</b>
X13.2	The <i>Contractor</i> ensures that the on-demand performance bond is valid and enforceable until the <i>Contractor</i> has Provided the Services and remedied any and all <i>defects</i> therein. If the terms of the performance bond specify its expiry date, then the <i>Contractor</i> extends the validity of the performance bond 28 days prior to such an expiry date.

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 <i>Service Manager</i> (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> </ul> <p>the occurrence of any one of the following termination reasons: R1 to R15, R18 and R22 to R24.</p>
X13.4	<p>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.</p>
Z	<p><b>THE ADDITIONAL CONDITIONS OF CONTRACT ARE</b></p> <p>Z1 to Z18 always apply</p>
Z1	<p><b>Cession delegation and assignment</b></p>
Z1.1	<p>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>.</p>
Z1.2	<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>. or the purpose hereof</p>
Z1.2.1	<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 "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>
Z2	<p><b>Joint ventures</b></p>



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>Service 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><i>Contractor's</i></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>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service 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>
Z5.1	<p>For the purposes of this Z-clause, the following definitions apply:</p> <ul style="list-style-type: none"> <li>• Affected Party means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> 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,</li> <li>• Collusive Action 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,</li> <li>• Committing Party 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,</li> <li>• Corrupt Action 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,</li> <li>• Fraudulent Action 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,</li> <li>• Obstructive Action 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</li> <li>• Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt</li> </ul> <p>Action, Fraudulent Action or Obstructive Action</p>
Z5.2	A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof
Z5.3	The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Service if a Committing Party has taken such 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 <i>Employer</i> 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 <i>Employer</i> can terminate the <i>Contractor's</i> obligation to Provide the Service for this reason.

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

	<p>(c) after disclosure is received by the Recipient in good faith from a third party who is under no obligation of confidence in relation thereto or becomes generally available to third parties by publication or otherwise, other than by reason of a breach of duty or of this Agreement; or</p> <p>(d) the Discloser is compelled to disclose by virtue of a court order or tribunal</p>
Z6.2	Any disclosure of Information shall be solely for the purpose of the performance of the Contract and the 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 Discloser.
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 which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to Others in terms of clause 25.1, the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z6.4	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Service 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 and after Completion, requires the prior written consent of the <i>Service Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z6.7	The <i>Contractor</i> ensures that all its subcontractors abide by the undertakings in this clause.
<b>Z7</b>	<b>Waiver and estoppel: Add to core clause 12.3:</b>
Z7.1	Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Service Manager</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 signed by both parties.

<b>Z8</b>	<b>Provision of a Tax Invoice and interest.</b>  Add to core clause 51
Z8.1	Within one week of receiving a payment certificate from the <i>Service 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 Service Information, showing the amount due for payment equal to that stated in the payment certificate.
Z8.2	The <i>Contractor</i> (who is required to register as a person carrying on an enterprise in terms of the Value-Added Tax No. 89 of 1991(the "VAT Act")) must issue a tax invoice that is compliant with the VAT Act.
Z8.3	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 4740101508 on each invoice he submits for payment.
<b>Z9</b>	<b>Employer's limitation of liability</b>
Z9.1	The <i>Employer's</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The <i>Contractor's</i> entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the <i>Employer's</i> liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.
<b>Z10</b>	<b>Communications</b>
Z10.1	Add to the end of the first sentence in core Clause 13.1:  "excluding communication by a communications protocol allowing the interchange of short text messages between mobile telephone."
<b>Z11</b>	<b>Defects:</b>  Insert new Z-clauses as follows:  Amend the Contract Data to include provision for:
Z11.1	Insert a definition in core clause 11.2 (20) as follows:  The Defects Certificate is either a list of Defects that the <i>Service Manager</i> has notified before the defects date which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none.
Z11.2	Replace the definition of defect in core clause 11.2 (4) as follows:

	<ul style="list-style-type: none"> <li>a part of the <i>service</i> which is not in accordance with the Service Information or a part of the <i>service</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Service Manager</i> has accepted.</li> </ul>
<b>Z12</b>	<p>Replace Core clause 42 as follows:</p> <p>42.1 Until the <i>defect date</i>, the <i>Service Manager</i> may instruct the <i>Contractor</i> to search for a Defect. He gives his reason for the search with the instruction. Searching may include:</p> <ul style="list-style-type: none"> <li>Uncovering, dismantling, recovering and re-erecting work.;</li> <li>Providing facilities, material and samples for tests and inspections done by the <i>Service Manager</i>;</li> <li>Doing tests and inspections which the Service Information does not require</li> </ul> <p>42.2 Until the end of liability date, the <i>Service Manager</i> promptly notifies the <i>Contractor</i> of each Defect as soon as he finds it, and the <i>Contractor</i> promptly notifies the <i>Service Manager</i> of each Defect as soon as he finds it.</p> <p>42.3 The <i>Contractor</i> corrects a Defect whether or not the <i>Service Manager</i> notifies him of it.</p> <p>42.4 The <i>Contractor</i> corrects a notified Defect before the end of the defect correction period. The defect correction period begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.</p> <p>42.5 The <i>Service Manager</i> issues the Defects Certificate at the later of the defects date and the end of the last defect correction period. The <i>Employer's</i> rights in respect of a Defect which the <i>Service Manager</i> has not found or notified are not affected by the issue of the Defects Certificate.</p> <p>42.6 The <i>Service Manager</i> arranges for the <i>Employer</i> to allow the <i>Contractor</i> access to and use of a part of the services which he has taken over if they are needed for correcting a Defect. In this case the defect correction period begins when the necessary access and use have been provided.</p> <p>42.7 Until the end of liability date, the following will not be considered a Defect:</p> <ul style="list-style-type: none"> <li>Repair by the <i>Employer</i> or third party without the prior written consent of the <i>Contractor</i></li> <li>Failure, by the <i>Employer</i> or a third party, to comply with <i>Contractor's</i> instructions for storage, commissioning, operation and maintenance of the equipment;</li> </ul> <p>Normal equipment wear and tear or exposure to inclement weather.</p>
<b>Z13</b>	<p>Amend clause 43.1 by deleting the last sentence of the paragraph and replacing it with the following:</p>

	44.1 <i>"If the Service Manager accepts the quotation, he gives an instruction to change the Service Information, the Prices and the Completion Date accordingly."</i>
<b>Z14</b>	Add core clause 45: Uncorrected Defects  45.1 If the <i>Contractor</i> is given access in order to correct a notified Defect but he has not corrected it within its defect correction period, the <i>Service Manager</i> assesses the cost to the <i>Employer</i> of having the Defect corrected by other people and the <i>Contractor</i> pays this amount. The Service Information is treated as having been changed to accept the Defect.
	45.2 If the <i>Contractor</i> is not given access in order to correct a notified Defect before the defects date, the <i>Service Manager</i> assesses the cost to the <i>Contractor</i> of correcting the Defect and the <i>Contractor</i> pays this amount. The Service Information is treated as having been changed to accept the Defect.
<b>Z15</b>	<b>Delay Damages- Non-operational Crane</b>
Z15.1	If the crane provided by the <i>Contractor</i> is not operational due to any fault, defect, or failure attributable to the <i>Contractor</i> , and as a result the Services as set out in the Service Information cannot be performed, the <i>Contractor</i> pays delay damages at the rate stated in the Contract Data for each day (or part thereof) that the Services are so prevented.
Z15.2	The <i>Contractor</i> is afforded a period of 24 (twenty-four) hours from becoming aware of, or being notified of, such fault, defect, or failure to remedy the issue and restore the crane to full operational capacity.
Z15.3	If the <i>Contractor</i> fails to remedy the fault within the 24 (twenty-four) hour period, the <i>Contractor</i> shall, at its own cost and risk, provide a suitable replacement crane within a further period of 48 (forty-eight) hours.
Z15.4	Delay damages in terms of this clause commence accruing after the expiry of the initial 24 (twenty-four) hour remedy period and shall continue to accrue until the earlier of:  (a) the crane being restored to full operational capacity; or  (b) a replacement crane being provided and operational in accordance with clause Z15.3
Z15.5	The <i>Contractor</i> remains liable for delay damages notwithstanding the provision of a replacement crane, to the extent that the Services could not be performed during the relevant period.

Z15.6	The payment of delay damages does not relieve the <i>Contractor</i> from its obligation to provide an operational crane and to perform the Services in accordance with the Contract.
Z15.7	The <i>Employer</i> may recover delay damages from any amounts due to the <i>Contractor</i> .
Z15.8	The periods stated in this clause operate strictly and are not subject to extension or relief unless agreed by the Employer in writing.
Z15.9	The <i>Employer</i> shall have a right during the identified delay period to intervene and accelerate the <i>service</i> or appoint a third party to assist to get an operational crane and complete the Service Information. The cost of the appointed third party work shall be borne by the <i>Contractor</i> .
<b>Z16</b>	<b>Intellectual Property</b>
Z16.1	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 Works 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> .
Z16.2	The <i>Employer</i> grants the <i>Contractor</i> a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.
Z16.3	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 <i>Contractor's</i> Intellectual Rights, obtained prior to this contract, in connection with the Works and this contract.
Z16.4	All Intellectual Property created, enhanced or improvement arising from Providing the Works or from or in connection to the contract exclusively vests in the <i>Employer</i> .
Z16.5	If the <i>Employer</i> is prevented from receiving the Works 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 Works or the relevant part thereof for its intended purpose.
Z16.6	<p><b>Modification or replacement of the Works</b></p> <p>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 Works or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with Works that do not infringe Intellectual Property rights.</p>



Z17	Right to Audit
Z17.1	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.
Z17.2	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.
Z17.3	The <i>Contractor</i> shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with providing the Works and all matters related thereto (whether contained in documents or in electronic format) for the period of this Contract, and for a period of at least 5 (five) years after termination or completion of all of the Works (as the case may be).
Z17.4	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.
Z17.5	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.



## C1.2 CONTRACT DATA (Continued)

Part two – Data provided by the *Contractor*

### Notes to a contractor:

1. Please read both the NEC3 Term Service Contract (April 2013) and the relevant parts of its Guidance Notes (TSC3-GN)<sup>1</sup> in order to understand the implications of this Data which the Contractor is required to complete. An example of the completed Data is provided in the TSC3 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.

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	
	The <i>subcontracted fee percentage</i> is	
11.2(14)	The following matters will be included in the Risk Register <b>Note: The listing of risks on the Risk Register does not have the effect of fixing either of the parties with any particular risk.</b>	

11.2(15)	The Service Information for the Contractor's design and plan is in:	The Service Information
21.1	The plan identified in the Contract Data is contained in:	
	The <i>direct fee percentage</i> is.	
	The <i>subcontracted fee percentage</i>	
24.1	The key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
	3 Name:	

	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
	4 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
	5 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
	6 Name:	
	Job	
	Responsibilities:	

	Qualifications:	
	Experience:	
7	Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
8	Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
9	Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
10	Name:	

	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
<b>A</b>	<b>Priced contract with price list</b>	
11.2(12)	<p>The <i>price list</i> is in</p> <p><b>Note: The <i>price list</i> is used for payment purposes</b></p> <p><b>Please insert a reference to the list of activities prepared by the Tenderer which he expects to carry out in Providing the Services indicating a lump sum for each activity which requires such.</b></p>	<b>The Prices C2.2</b>
11.2(19)	The total of the Prices is	<b>Total of Task Orders</b>

## 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.**

1.1.2. "Guarantor's Address" - means [●]; *[Drafting Note: Guarantor's physical address to be inserted]*

1.1.3. "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]*

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

1.1.5. "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;

1.1.6. "Expiry Date" – means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 4.3;

1.1.7. "this Guarantee" - means this Performance Bond;

1.1.8. "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]*

1.1.9. "Service Manager" - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; and

1.1.10. 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 *Service Manager*;

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.

3. 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.

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

4.1. 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.

4.2. 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.

4.3. 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 4.1 to 4.3 shall apply in respect of any claim received by the Guarantor during the Security validity.

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

5.1. confirm the "Guaranteed Sum" at the time of the demand;

5.2. state the amount claimed ("the Demand Amount"); and

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

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

5.3.1.1. 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 5.3.1.2 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;

5.3.1.2. 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 *Service Manager* in an interim or final payment certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, Employer intends to call upon the Guarantor to make payment in terms of paragraph; and

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

5.3.2. 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:

5.3.2.1. 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

5.3.2.2. 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.

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

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

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

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



7. *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.
8. 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.
9. The Guarantor's obligations in terms of this Guarantee:
  - 9.1. shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - 9.2. 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*.
10. This Guarantee:
  - 10.1. shall expire on the Expiry Date until which time it is irrevocable;
  - 10.2. is, save as provided for in 8 above, personal to Employer and is neither negotiable nor transferable;
  - 10.3. shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - 10.4. 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
  - 10.5. 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.
11. 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 Term Service Contract Option A: Priced Contract with Price List of April 2013 (including amendments)

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

## C2.1 PRICING ASSUMPTIONS: OPTION A

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

Clause 11 in NEC3 **Term Service Contract, April 2013 (TSC3)** core clauses and Option A states:

Identified and defined terms	11	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
	11.2	
		(17) The Price for Services Provided to Date is the total of the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

### Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information." This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information." Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

### Link to the *Contractor's* Plan / Programmes

Clause 21.4 states that "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each Plan / Programmes which he submits for acceptance." Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 Plan / Programmes in such a way that operations shown on it can be priced in the Price List and result in a satisfactory cash flow in terms of clause 11.2(17).

### Preparing the Price List

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3.

Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he consider necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Service as described at the time of entering into this contract.

Article I. As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and rates must also include for the correction of Defects.

If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.

There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

Hence the Prices and rates tendered by the *Contractor* in the *price list* are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk.

The *Contractor* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

#### Format of the price list

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

## **C2.2 PRICING INSTRUCTIONS**

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

**C2.3 PRICE LIST**





## PART 3: SCOPE OF WORK

### NEC 3 Term Service Contract Option A: Priced Contract with Price List of April 2013 (including amendments)

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

### **C3.1 EMPLOYERS SERVICE INFORMATION**

The following standards, regulations, and any other relevant documentation must be complied with and applied to all crane hire procurement documentation, practices, and procedures.

Area	Reference
Occupational Health & Safety	Occupational Health and Safety Act, Act 85 of 1993
Lifting Machinery Regulations	Driven Machinery Regulations, 2015 (as amended)
Construction Safety	Construction Regulations, 2014
Lifting Equipment Standards	SANS 500 – Lifting machines (general safety and design requirements) SANS 10295 -Use, inspection, and maintenance of lifting equipment SANS 10375 – Inspection of lifting machines by Lifting Machinery Inspectors (LMI)
Pressure System	Pressure Equipment Regulations, 2009 SANS 347:2012 – Categorization and conformity assessment for pressure equipment.
Operator Competency	Certification of crane operators through TETA- accredited training providers Operators shall be medically fit and competent in accordance with OHS Act requirements
Lifting Equipment & Accessories	All lifting tackle shall be load tested, certified, and marked in accordance with applicable standards and regulations
Inspection & Certification	All cranes and lifting equipment shall have valid load test certificates and be inspected by a registered Lifting Machinery Inspector (LMI) in accordance with legislative requirements
Risk Management	Site specific risk assessments and lift plans shall be developed prior to lifting operation
Procurement	Preferential Procurement Policy Framework Act, 2000 (PPPFA) Preferential Procurement Regulations, 2022
Quality	ISO 9001:2015 – Quality Management Systems
Environmental & General Compliance	National Environmental Management Act (NEMA), 1988

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

## **C3.2 CONTRACTORS SERVICE INFORMATION**

### **1 DESCRIPTION OF THE WORKS**

#### **1.1 Employer's objectives**

The Employer's objectives are to procure the services as indicated in this document, hiring of two tower cranes as required for the construction of the Tzaneen dam.

#### **1.2 Overview of the works**

The DBSA, on behalf of the Department of Water and Sanitation (DWS) has an objective to complete the upgrading of the Tzaneen Dam.

#### **1.3 Extent of the works**

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

#### **1.4 Schedule 1 (Specifications and Scope)**

Here below is the list of items purchased by the DBSA and supplied by the Supplier in the terms and conditions of the afore Agreement:

### **2. TOWER CRANE**

#### **2.1 DESCRIPTION**

The supply, delivery, hire, erect, testing (functionality and load testing), commissioning & de – commissioning of Tower Crane services for period of up to 16 (sixteen) months to Department of Water and Sanitation: Construction North for Tzaneen Dam Raising project in the Limpopo province.

- The Tower Cranes shall be self-powered, electrically operated type, free standing, and full slewing.
- The renting period shall commence after the successful commissioning of the Tower Crane

#### **Note:**

- Normal working day for the project will be six days/week, from Monday to Saturday and time will be from 06:30 AM to 16:15 PM.
- Overtime work will be based on actual hours worked on plant and labour, on approval by Service Manager and Employer.

#### **2.2 OPERATING MASS**

- The operating mass of crane without ballast shall be 20 tons.
- A non – corrosive Safe Working Load plate (SWL) shall be affixed giving the maximum loading capacity of the crane and maximum permissible loads at maximum and minimum radii.
- The lettering on this plate will be at least 200 mm high.

## 2.3 CRANES

- Quantity of required: refer to the Price List
- The Tower cranes shall conform to, and all relevant standards mentioned therein. The Tower Cranes hook shall have a gravity type safety catch.
- The Tower cranes diesel storage must comply with the legislature and bi-laws.
- The Tower cranes shall comply with the occupational health and safety act and regulations Refer to Annexure of OHS and Environmental
- The capacity of the Tower Cranes, full circle, is to be not less than 3090 kg at 70 metres radius on two fall reeving with a maximum height under the hook of not less than 27, 2 metres, free from standing.
- The Tower cranes jib length shall not be less than 70 metres.
- The Tower cranes shall have the capacity to give a heavy lift of not less than 12 000 kg at a minimum radius of 22,0 metres.
- The Tower Cranes shall be equipped with sufficient rope to lower the hook from top to the base when rigged to maximum height with-four fall rigging.
- The minimum height of the Tower Cranes shall not be less than 70-meters from the deployment position on the downstream face of spillway.
- The lower the mast height, the lower will be the base reactions due to wind load. A low mast height will enable a smaller mobile crane to be used to erect the mast sections and jib.
- Lifting equipment needs to comply with the minimum safety aspects i.e. Chains, shackles, slings,
- The riggers and flagmen will have a minimum of one per collection point. One collection point will be utilised with one drop zone. Standby personnel should be provided for the riggers and the flagmen.
- Security of the tower crane and other related accessories remain the responsibility of the supplier.

### 2.3.1 Current Two (2) existing Tower Cranes at Tzaneen Dam Project

#### 2.3.1.1 Current Design Criteria

They are different design elements that were considered for the current specifications of these crane bases. These considerations were based on the loading, site conditions and specific requirements of the cranes for Tzaneen dam project.

#### 2.3.1.2 Loading Design

Below are the two selected cranes existing on site and the loading requirements for each crane. **Crane 1** servicing the right bank and **Crane 2** servicing the left bank. These loads requirements are as per current service provider. **Note:** bidding service providers to provide their own loads requirements, certified by a professional person confirming compatibility of current designs and proposed tower cranes to be installed.

In-service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (No wind)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	6	-755	1591	-780	403
In-service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (Tail wind 72 KM/H)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	32	-755	2496	-1117	740
Out-of-Service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (Tail wind 151 KM/H)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	108	-658	3052	-1300	971

**Figure 1: Crane 1 Loads (Right Bank)**

**Figure 2: Crane 2 Loads (Left Bank)**

In-service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (No wind)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	6	-755	1591	-780	403
In-service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (Tail wind 72 KM/H)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	32	-755	2496	-1117	740
Out-of-Service Crane Loads for 65m Jib No. 8 tower section TS21 22.6 (Tail wind 151 KM/H)					
Hook Height [m]	H [kN]	V [kN]	M [kNm]	R1 [kN]	R2 [kN]
49.5	108	-658	3052	-1300	971

### 2.3.1.3 HOIST WINCH

- The winch shall be capable of following hoist speed
  - 0 to 15 m/min, with kg load
  - 0 to 25 m/min, with 6750kg load
  - 0 to 54 m/min, with 3000kg load
  - 0 to 78 m/min, with 1500kg load

#### 2.3.1.2.1 SLEWING

- The crane shall be capable of slewing at not less than 0.70 r.p.m. at maximum slewing speed.

#### **2.3.1.2.2 TROLLEY SPEED**

- The speed shall be variable from 0 – 78 m/min.

#### **2.3.1.2.3 FOUNDATION BASE**

There are currently two (2) tower crane concrete bases at Tzaneen dam stilling basin, therefore the winning tenderer is recommended to make use of the existing structure. It must be noted that an inspection during site briefing and design by a professional must be submitted confirming the intended cranes to be hired will meet the current bases specifications and limits. The design purpose must aim to detail the design process, emphasizing safety, efficiency, and adherence to project-specific criteria for successful construction.

##### **Existing Tower Crane Bases**

##### **Current Concrete Bases Parameters**

Each base comprises a 5.5m x 5.5m reinforced concrete foundation securely anchored into in-situ rock using rock anchors. A top of the foundation sits a 3.5m x 3.5m reinforced concrete plinth, supporting four 1m x 1m reinforced concrete columns spaced at 1.9m center to center with a height of 8m. To enhance structural stability, these columns are braced at 2.5m intervals using Steel I-beam sections. The combined length of the tower crane bases is 12m, culminating in a final top of the column elevation at 692.00m.

##### **Current Concrete Bases Design Drawings**

Drawings include foundation design loads (horizontal, vertical and moment reactions under various wind cases), indicating that the existing plinths were designed for a defined crane loading envelope. For further details, please refer to the attached Annexure F (Design Report) and Annexure D & E (drawings)

##### **Existing Tower Crane Bases**

Note: existing plinths to be assessed and verified by a professional person for compatibility with current design parameters for the concrete bases and provide a report to be approved by the Engineer on site.

- The tenderer is required to familiarize himself with Site conditions on apron section where the plinths are resting.
- The tenderer is required to install the Tower Cranes on existing plinths on Site.
- The tenderer must perform a detailed assessment to verify the existing concrete bases on base plates geometry, anchor bolts configurations and reaction loads, for the purpose of compatibility between a proposed cranes and the existing plinths must be verified against the original design loads.

#### **2.3.1.2.4 SAFETY DEVICES**

- The Tower crane shall be fitted with the following minimum safety devices.
- A maximum safe working load cut – out, which shall prevent lifting a load at any radius which exceeds the cranes' maximum safe working load.
- The jib trolley shall be capable of first being decelerated and then stopped as it reaches either end of the track.
- A hook limit switch shall be provided to prevent the hook being wound into the jib and from

touching the ground causing the rope to wind off the hoist drum. This device shall be capable of being reset when the height of the crane is altered.

- Digital indication of the load on the hook.
- Lighting must be fitted or provided on the tower crane as per OHS and Environmental regulations (Which stipulate the LUX levels)

**Note: the safety devices in (i) and (ii) above shall be automatic and shall not require adjustment by operator during normal operating duties.**

#### **2.3.1.2.5 CAB**

- A fully glazed cab mounted in the tower sections of the crane with twin joy – sticks control is required.
- The cab must be fully furnished i.e. air conditioners

#### **2.3.1.2.6 ELECTRICAL SUPPLY**

- All electrical equipment shall be suitable for 380 volts, 3 phase and 50 Hz supply.
- Power supply generators shall be placed at a level above the flood line at right and left bank to avoid flooring.
- The power supply must be capable of supplying all the loads on the tower crane.
- The steel structure of the tower crane shall be earthed.

#### **2.3.1.2.7 ERECTION AND TESTING**

- The crane shall be erected on site at Tzaneen Dam in Tzaneen Town.
- The cranes shall be tested on site with overload under both maximum heavy load and maximum radius conditions.
- All testing shall comply with SANS 522 - the inspection, testing and examination of tower cranes and all costs shall be included in the bid price.
- Test weight certificate shall be supplied by the successful bidder.

#### **2.3.1.2.8 COMMISSIONING**

- The tower cranes and any associated equipment shall be commissioned on site at Tzaneen Dam in Tzaneen Town.
- Tower cranes may be de-commissioned during rainy season (November – March)
- Tower cranes may be re-commissioned during the start of dry season (month to be confirmed)
- All costs shall be included in the bid price.

#### **2.3.1.2.9 MANUALS**

- Three copies of operating instructions, spare parts manuals and workshop manuals shall be supplied.

#### **2.3.1.2.10 OPERATOR, MAINTAINCE AND TECHNICAL SUPPORT**

- The operator of the Tower Crane shall be provided by the tenderer, cost for remuneration,



accommodation, daily transportation from/to site will be included in bid rates by the tenderer.

- Maintenance servicing of Tower Crane shall be responsibilities of the Contractor.
- Should any problem be reported to the supplier concerning the services, the following response times are expected:
  - Within 24 hours a representative of the Contractor should be on site to resolve the problem.
  - Within 24 hours there should be a solution to the problem or if not possible, replacement products should be on site within 48 hours at the Contractor's expense.

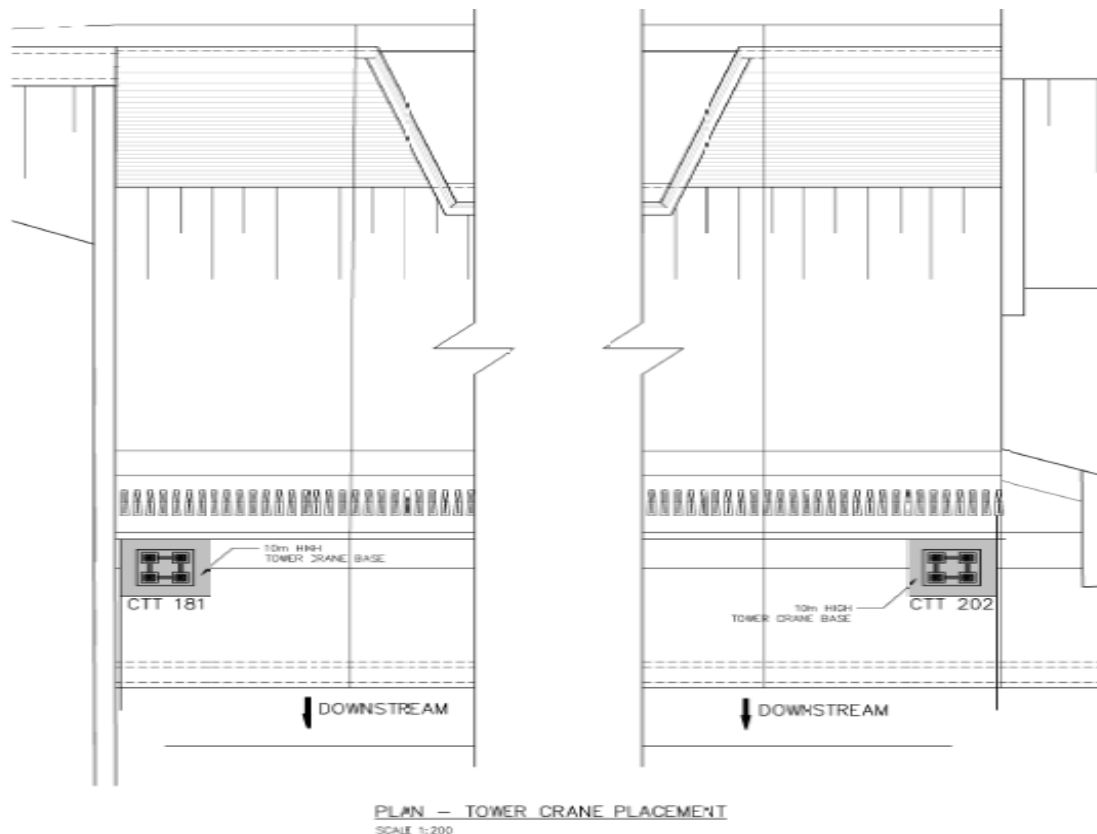
**ANY DEFECTED PRODUCT SHOULD BE REPLACED AT THE CONTRACTOR'S EXPENSE**

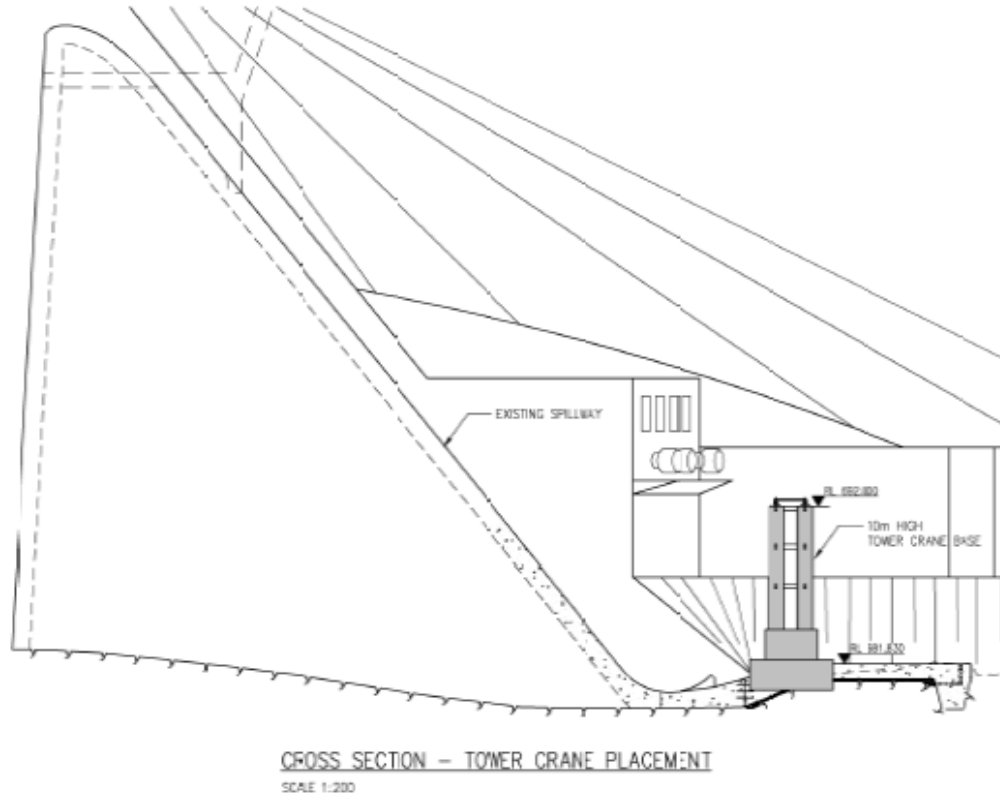
**2.3.2 Schedule 2 (Purchase Order /Contract Price)**

**2.3.3 Schedule 3 (Purchase Order /Contract Price)**

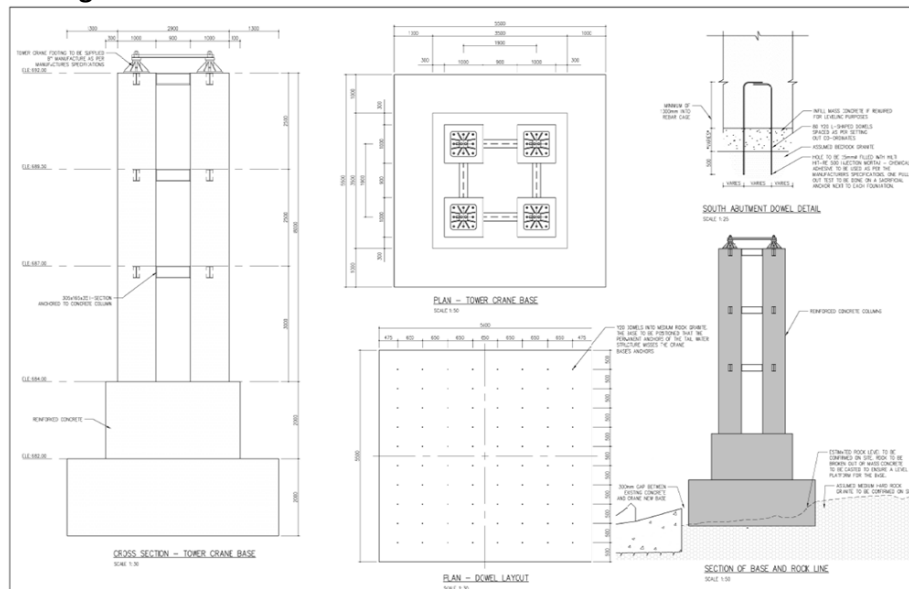
The assembling of the tower crane must be completed within 14 days after the appointment.

**Appendix A (Illustrative sketches)**





## Raising





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

### **Accommodation of Traffic**

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

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

### **Coordination with Other contractors**

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

### **Temporary Works and Traffic Accommodation**

As the Works are to be implemented within a rural area, the Contractor will be required to carry out all temporary works that will be necessary to maintain the flow of traffic and to ensure that pedestrian and vehicular access is maintained to locals.

### **Setting Out of Works**

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

### **Location of the works**

The Works to be implemented are located in the area of jurisdiction of the various District Municipalities as provided.

### **Temporary works**

As the Works are to be implemented within a build-up area, the Contractor will be required to carry out all temporary works that will be necessary to maintain the flow of traffic and to ensure that pedestrian and vehicular access is maintained to locals. Accommodation of traffic when transporting the crane and any other related equipment, to and from site, must be handled by the successfully appointed Contractor. Arrangement of required permits, approvals etc., must be done and remains the responsibility and accountability of the successfully appointed Supplier / Contractor.

The Contractor is responsible for all temporary works designs, installations, operations etc.

### **Occupational Health And Safety**

The Contractor needs to comply with the following legal requirements:

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

### **DRAWINGS**

Refer to Appendix A (Illustrative sketches) under 1.3.3 earlier in the document.

## **3 PROCUREMENT**

### **3.1 Preferential procurement procedures**

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

### **3.2 ~~Scope of mandatory subcontract work~~**

~~3.2.1 In terms of this tender and the contract to be awarded, Seventy 70% percent of the first Forecast of the Total of Defined Cost (Contract Price), excluding the *direct and indirect fee*, must be subcontracted by the management contractor. In accordance with the requirements of regulation 9 read with Regulation 12 of the Preferential Procurement Regulations 2017 issued in terms of the Preferential Procurement Policy Framework Act, Act 5 of 2000, (PPPFA) a minimum of thirty (30%) percent of the Contract Price to be subcontracted to the categories of potential subcontractors specified in the regulations and as set out in the PPPFA Prequalify and subcontracting Schedule referred to in Volume 2 of the Tender invitation for RFP016/2019~~

~~3.2.2 To the extent that the subcontracting of the categories referred to in 3.2.1 above is less than Seventy 70% of the Contract Price other categories may be subcontracted firstly on basis that ownership is at least fifty one percent (51%) Black Owned as defined for the BBBEE Act and lastly on an open basis on all categories, always provided that the subcontractors are Eastern Cape Province (ECP) based.~~

~~3.2.3 Further to the above subcontracting requirements the management Contractor shall engage subcontractors in the construction industry firstly with a CIDB GRADE 7GB registration and secondly with a grade 7 registration, all ECP based. The management Contractors shall ensure that part of the 70% allocated to the sub-contractors, minimum threshold of 30% of that works are allocated to the enterprises owned by black women and minimum threshold of 30% allocated to the enterprises owned by black youth. As part of the subcontracting a formal development plan to be included which would assist such subcontractors to apply for higher grading registration and strengthen the expertise and quality work delivery of such subcontractors.~~

~~3.2.4 In the instance where works is to be subcontracted, competitive tenders shall be invited in respect of each portion of works in accordance with the relevant provisions of the latest edition of the CIDB Standard for Uniformity in Construction Procurement. The Contract Data in the associated procurement documents shall~~

~~be based on the use of BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement / CIDB Standard subcontract (labour only) / / SAFCEC General conditions of subcontract (2003 edition) (select appropriate option) / NEC Engineering and Construction Subcontract / NEC Engineering and Construction Short Subcontract with minimal project specific variations and amendments that do not change their intended usage.~~

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

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

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

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

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

## **4 CONSTRUCTION**

### **4.1 Applicable SANS 2001 standards for construction works**

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

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

13) SANS 2001DP6

14) SANS 2001EM1

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

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

#### **4.2 Applicable national and international standards**

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

#### **4.3 Certification by recognized bodies**

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

#### **4.4 Plant and materials provided by the employer**

*Not Applicable*

#### **4.5 Services and facilities provided by the employer**

*Not Applicable*

#### **4.6 Plant and equipment**

*Everything supplied by the successfully appointed supplier, as per the scope of work.*

### **5 Management**

#### **5.1 SANS 1921 standards**

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

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

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

The associated Specification Data is as follows:

#### **SANS 1921-1, Construction and management requirements for works contracts – Part 1: General engineering and construction works**

Clause	Specification data
--------	--------------------

### Essential data

4.1.7	The Contractor is responsible for providing shop drawings, product information and necessary calculations.
4.2.1	The responsibility strategy assigned to the Contractor for the works is A.
4.2.2	The structural engineer is: ARQ/PSP
4.3.1	The planning, programme and method statements are to comply with the following: <ul style="list-style-type: none"> <li>1) Program to be submitted in Microsoft Project format (cost and resource loaded)</li> <li>2) Gantt chart to indicate critical path and progress</li> <li>3) Gantt chart to be updated before monthly site meeting</li> </ul>
4.3.3	The notice period for inspection is 2 Days
4.9.3	The trees and shrubs which are not to be disturbed are to be identified on site. Where possible, the disturbance of trees should be avoided.
4.14.3	<p><del>The office accommodation, equipment, accommodation for site meetings and other facilities for use by the employer and his agents are:</del></p> <ul style="list-style-type: none"> <li>1) <del>Site office</del> which shall be used for site meetings and for the contractor's use. Such an office shall comprise a minimum of 20m<sup>2</sup> in area and 3 m high, be ventilated, have good lamination, must be reasonably sound proof, and have a hard floor construction. It shall be furnished with a desk on which drawings can be rolled open and on which there is sufficient writing space and sufficient temporary chairs or benches to accommodate all persons present at site meetings. <b>(Minimum 15 seater)</b></li> <li>2) <del>The following facilities will be supplied to the employers representatives:</del> <ul style="list-style-type: none"> <li><del>15 Hardhats for employers representatives visiting the site</del></li> <li><del>15 Safety (High visibility) jackets for employer representatives visiting the site</del></li> <li><del>15 sets of safety Goggles</del></li> <li><del>15 sets of earplugs (when applicable)</del></li> </ul> </li> </ul>
4.14.5	<del>The Contractor is required to provide latrine and ablution facilities for the exclusive use of the professional team and client</del>
4.14.6	<p><del>The requirements for the provision and erection of separate sign boards for consultants and subcontractors are:</del></p> <ul style="list-style-type: none"> <li>1) <del>See Bill of Quantities.</del></li> </ul>
4.17.1	The requirements for the termination, diversion or maintenance of existing services are: <ul style="list-style-type: none"> <li>1) none</li> </ul>
4.17.3	Services which are known to exist on the site are:



- 1) Water network.
- 2) Electricity reticulation, sub-surface and over head
- 3) Sewer Network
- 4) Municipal roads

### **Additional clauses**

#### **1 Site meetings and procedures**

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

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

#### **2 Water and electricity**

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

- a) water : A
- b) electricity : A

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

electricity from the local authority / ESKOM for the works at his own cost.

make use of electricity free of charge for construction purposes only.

responsible for costs associated with all electricity consumed.

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

- Security
- Sewer services in the form of temporary toilets
- Waste disposal facility
- NOTE: study the requirements stated in the description of the works / scope of work (under 3.1) and align your pricing with the required deliverables and specifications.

**SANS 1921-5, Construction and management requirements for works contracts – Part 5: Earthworks activities which are to be performed by hand.**

Clause	Specification Data
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**Essential Data:**

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

- |   |  |
|---|--|
| 1 | <p><b>Stone pitching and rubble concrete masonry</b></p> <p>All stone required for stone pitching and rubble concrete masonry, whether grouted or dry, shall be collected, loaded, off loaded and placed by hand.</p> <p>Sand and stone shall be hauled to its point of placement by means of wheelbarrows where the haul distance is not greater than 150m.</p> <p>Grout shall be mixed and placed by hand.</p> |
| 2 | <p><b>Manufactured Elements</b></p> <p>Elements manufactured or designed by the Contractor, such as manhole rings and cover slabs, precast concrete planks and pipes, masonry units and edge beams shall not individually, have a mass of more than 320kg. In addition the items shall be large enough so that four workers can conveniently and simultaneously acquire a proper hand hold on them.</p>          |

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

- |          |   |
|----------|---|
| 4.2.1(a) | <p>A qualified Contractor is a Contractor that is one that is accredited or provisionally accredited training Contractor in the HIV/AIDS field.</p> <p>A list of accredited Contractors can be obtained from the Construction SETA (CETA) (tel 011-265 5900),</p> |
|----------|---|

	Health and Welfare SETA (HWSETA) (011-622 6852) or on the Health and Welfare SETA website: <a href="http://www.hwseta.org.za">www.hwseta.org.za</a> .
4.2.1(a)	The HIV/AIDS awareness programme is to be repeated at four month intervals throughout the duration of the contract. (Four times in total, including the initial one at the start of the contract.)
<b>Additional clauses</b>	
	The duration of each workshop is not to be less than 2 ½ hours.

### Recording of weather

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

### 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 with specific detail relating to Contract Participating Goals (CPG) as provided for in 3 above.~~

### Payment certificates

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

### Job statistics/targeted labour

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

### Training of targeted labour (non-accredited training) to the extent applicable

- The Contractor shall provide all the necessary on-the-job training to targeted labour to enable such labour to master the basic work techniques required to undertake the work in accordance with the requirements

of the contract in a manner that does not compromise worker health and safety.

- b) The Contractor shall be responsible for scheduling the training of workers and shall take all reasonable steps to ensure that each beneficiary is provided with a minimum of six (6) days of formal training if he/she is employed for 3 months or less and a minimum of ten (10) days if he/she is employed for 4 months or more.
- c) The Contractor shall do nothing to dissuade targeted labour from participating in training programmes.
- d) Proof of compliance with all the requirements must be provided by the Contractor to the Employer prior to submission of the final payment certificate.
- e) The Contractor should allow for a R3800 stipend, data per month, a laptop and handling fee per learner.

#### **5.7.2 Employment of local labour to the extent applicable**

- a) It is the intention that this Contract should make maximum use of the local labour force that is presently under-employed. To this end the Contractor shall limit the utilisation on the Contract of non-local employees to that of key personnel only and to employ and train local labour to the extent necessary for the execution and completion of this Contract.
- b) The Contractor shall fill in the form entitled Key Personnel in the Forms to be completed by the Tender. The data stated on the above-mentioned form will be strictly monitored during the Contract period and any deviations there from shall be subject to the prior approval of the *Service Manager*, which approval shall not be unreasonably withheld.
- c) The employment of casual labour will be done in co-operation with community leaders and local structures. The bidder shall ensure that all remuneration paid to employees is in line with the relevant sectorial determination in terms of the Basic Conditions of Employment Act, No 75 of 1997, as determined by the Department of Labour.

### **C3.3 PARTICULAR SPECIFICATIONS**

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

#### **PARTICULAR SPECIFICATION**

#### **PAGE NO.**

POHS: HEALTH AND SAFETY BASELINE SPECIFICATIONS

Annexure A

B/RA: BASELINE RISK ASSESSMENT

Annexure B

SHEQ : DBSA SHEQ POLICY

Annexure C

## **C3.4 DRAWINGS**

### **3.4.1 CURRENT CONCRETE BASES DESIGN DRAWING**

Refer to the following existing drawings attached:

- Annexure D : Tower Crane Existing Plinth
- Annexure E : Tower Crane Placement
- Annexure F : Tower Crane Design Report.

## **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 Works to be implemented are in the area of jurisdiction as shown in the map below:

Tzaneen – Tzaneen Dam (construction of the dam wall).

Latitude: 23°47'58.10"S (approx. coordinates) & Longitude: 30° 9'59.05"E (approx. coordinates)

