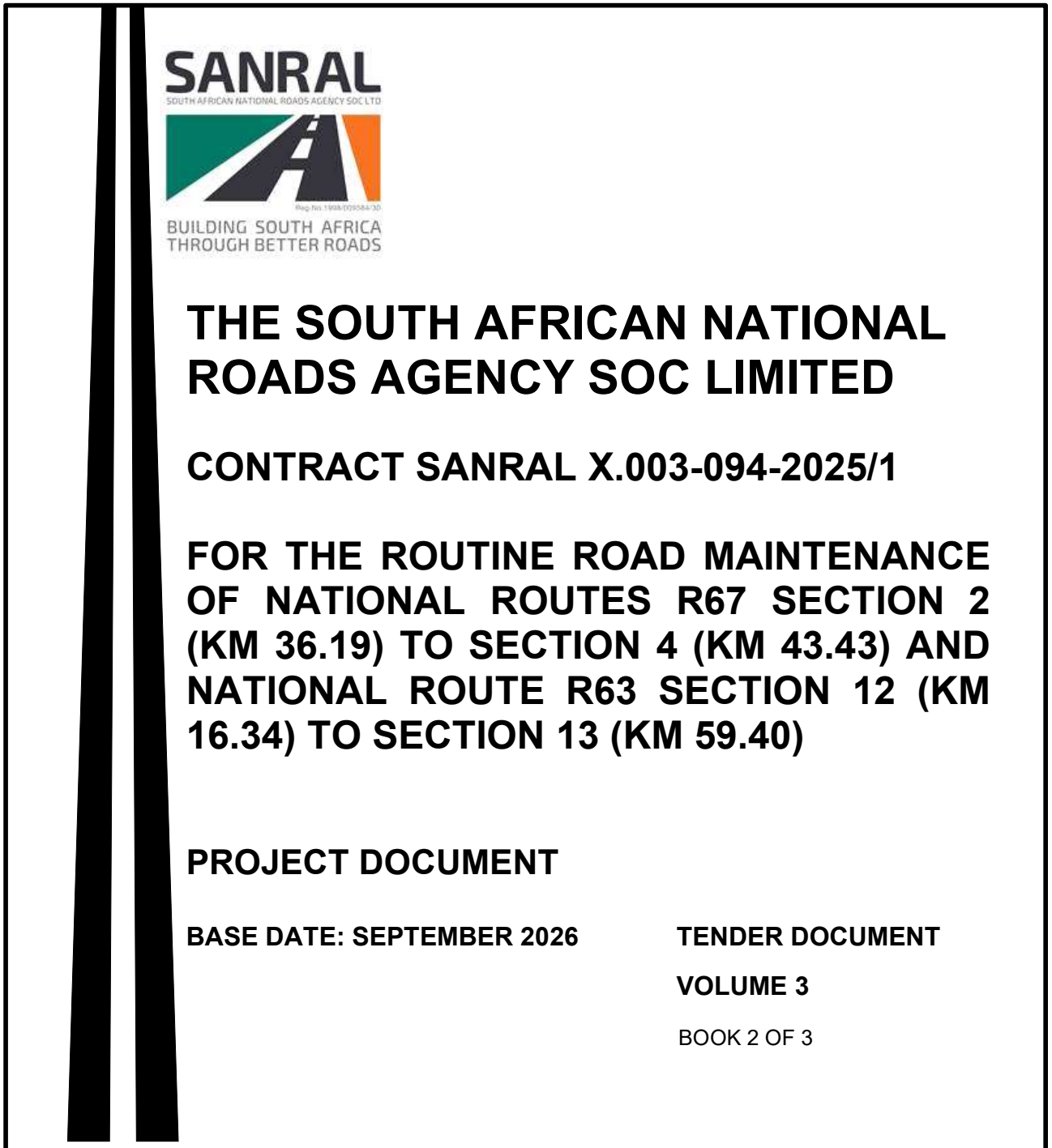


THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

CONTRACT SANRAL X.003-094-2025/1

FOR THE ROUTINE ROAD MAINTENANCE OF NATIONAL ROUTES R67 SECTION 2 (KM 36.19) TO SECTION 4 (KM 43.43) AND NATIONAL ROUTE R63 SECTION 12 (KM 16.34) TO SECTION 13 (KM 59.40)

PROJECT DOCUMENT

BASE DATE: SEPTEMBER 2026

TENDER DOCUMENT

VOLUME 3

BOOK 2 OF 3

CHIEF EXECUTIVE OFFICER
SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED
48 TAMBOTIE AVENUE
VAL DE GRACE
PRETORIA, 0184

NAME OF TENDERER: ……..……

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 FORMS OF OFFER AND ACCEPTANCE

C1.1.1 FORM OF OFFER (Incorporating SBD7)

The South African National Roads Agency SOC Limited
PO Box 415
PRETORIA
0001

Sir,

CONTRACT SANRAL X.003-094-2025/1
FOR THE ROUTINE ROAD MAINTENANCE OF NATIONAL ROUTES R67 SECTION 2 (KM 36.19) TO SECTION 4 (KM 43.43) AND NATIONAL ROUTE R63 SECTION 12 (KM 16.34) TO SECTION 13 (KM 59.40)

1. I/we, by signing this part of the forms of offer and acceptance acknowledge they are the equivalent of the Letters of Tender and Acceptance as defined in clauses 1.1.1.3 and 1.1.1.4 in the Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (1999), published by the Fédération Internationale des Ingénieurs-Conseils, (FIDIC).

2. I/we confirm that I/we practise the principles of corporate governance that abhors corruption and fraud, and that I/we have examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules and am/are duly authorised to represent and commit the tenderer to the contractual obligations contained therein.

3. I/we further confirm that by submitting this offer the tenderer accepts the conditions of tender and 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 tender and the conditions of contract identified in the contract data.

A. PRICE OFFERED

THE OFFERED TOTAL OF THE PRICES (INCLUSIVE OF VALUE ADDED TAX) BROUGHT FORWARD FROM PART C2.3: PRICING SCHEDULE SUMMARY IS

.....

..... (in words)

R ..... (in figures)

I/we confirm that if any difference between the total of the Pricing Schedule Summary and the amounts stated above exists, the total in the Pricing Schedule Summary shall apply.

B. PREFERENCE CLAIMED

I/we claim a B-BBEE status level ..... contributor as per Returnable Schedule Form A13.1: Tenderer's B-BBEE Verification Certificate subject to tender data clause 5.11.8. In the event of any difference between the above stated level of contributor and the B-BBEE Verification Certificate attached to Form A13.1, the B-BBEE Verification Certificate shall apply.

4. You may accept this offer by signing and returning to the tenderer one copy of the acceptance part of the forms of offer and acceptance before the end of the period of validity stated in the tender data, (or at the end of any agreed extension thereof), whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

5. Notwithstanding anything contained in a covering letter to this tender, I/we declare this offer is submitted entirely without deviations or qualifications other than those stipulated in Form A4: Schedule of Deviations or Qualifications by Tenderer, and that it is made free from any fraud, corruption and misrepresentation.

Yours faithfully

SIGNATURE:..... DATE: .....

NAME (IN CAPITALS): .....

CAPACITY: .....

EMAIL: .....

Date and minute reference of Board resolution if different from returnable schedule Form A2.1:

Certificate of Authority for signature .....

NAME AND ADDRESS OF ORGANISATION: .....

.....

.....

AS WITNESSES:

1..... .....
SIGNATURE NAME (IN CAPITALS)

2..... .....
SIGNATURE NAME (IN CAPITALS)

C1.1.2 FORM OF ACCEPTANCE (Incorporating SBD7)

To (*Name of successful tenderer)*

Dear Sir,

CONTRACT SANRAL X.003-094-2025/1
FOR THE ROUTINE ROAD MAINTENANCE OF NATIONAL ROUTES R67 SECTION 2 (KM 36.19) TO SECTION 4 (KM 43.43) AND NATIONAL ROUTE R63 SECTION 12 (KM 16.34) TO SECTION 13 (KM 59.40)

ACCEPTANCE OF OFFER

1. It is our pleasure to inform you that the South African National Roads Agency SOC Ltd (the Employer) accepts your (Note to compiler : select if applicable: corrected/uncorrected) offer in the amount of R…….. (i.e. including VAT but excluding CPA and any contingent sum not in the priced schedule) for a contract period of 42 months and with a Base date of September 2026.

2. The amount due may not be the accepted price but payment shall be made in accordance with the conditions of contract identified in the contract data.

3. This Form of Acceptance is the equivalent of the Letter of Acceptance as defined in clause 1.1.1.3 of the Conditions of Contract for Construction for Building and Engineering Works designed by the Employer (1999), published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC).

4. Acceptance shall form an agreement between us according to the terms and conditions contained in this form and in the contract that is comprised of:

   Part C1: Agreements and Contract Data (including this form of acceptance),
   Part C2: Pricing Data,
   Part C3: Scope of Work,
   Part C4: Site Information, and
   Part C5: Annexure

   together with issued drawings and other documents, or parts thereof, which may be incorporated by reference into Parts C1 to C5 listed above.

5. Deviations and/or qualifications included in your offer as well as any changes to the terms of the offer agreed by us during the process of offer and acceptance shall not be valid unless contained in the appended schedule of deviations. Addenda issued during the tender period are deemed not to be deviations to the tender documents and schedules.

6. Notwithstanding the need to agree the mandate required by Section 37 of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), a proforma of which is attached for your reference, we hereby appoint you as the principal contractor in terms of Regulation 5(1)(k) of the Construction Regulations, GNR. 84 of 2014

7. A SARS compliance check has been done on you and you are found to be ….. ***"***compliant***" or "***non-compliant***").** *"*Within 7 calendar days of the date of this Form of Acceptance you shall provide proof that you are TAX compliant. Failure to fulfil this obligation shall constitute a repudiation of this agreement*.")*

8. Within 14 calendar days of the date of this Form of Acceptance (including the schedule of deviations if any) you shall deliver to us:
   (i) Performance Security (per clause 4 of the FIDIC Conditions of Contract) a proforma of which is attached for your reference. The 2% calculation shall be based on the accepted contract value as contained in this form and there shall be no deviations from the wording of the proforma guarantee.
   (ii) Proof of insurance in terms of the information provided in the contract data and clause 18 of the FIDIC Conditions of Contract. Proof of validity of insured cover shall be provided on a monthly basis until contract completion. For purposes of this requirement, proof of insurance shall include the insurer- or broker-confirmed policy schedule or certificate and the endorsements required by Clause 18 and the Contract Data. Evidence of renewal or

Proforma

continuation of cover shall be provided before expiry and, in any event, within 5 (five) working days after each renewal. Monthly evidence of validity shall not relieve the Contractor of the obligation to maintain uninterrupted cover at all times.

(iii) Fully completed and signed Form C1.3.3 together with your Health and Safety plan and proof of the Construction Health and Safety Officer's registration with SACPCMP.

(iv) Proof that you are registered and in good standing with the compensation fund or with a licensed compensation insurer.

(v) A completed Form of Banking Details.

(vi) Proof of registration on the Employer's Project Information Module (ITIS).

(vii) Where applicable to any activity expressly included in the Scope of Work, proof of any statutory notification, permit or appointment required by the relevant authority.

Failure to fulfil the obligations (i), (ii) or (iii) above shall constitute a repudiation of this agreement and we may at our discretion apply any rights of remedy including barring you from tendering on any of our future tenders for a period to be determined by us, but not less than twelve (12) months, from the date of tender closure.

9. The effective date of the contract shall be the date of this Form of Acceptance unless you, within four (4) calendar days of the effective date, notify us in writing of any justification why you cannot accept the contents of this agreement.

10. The Commencement Date of the Works shall be that on which the site hand-over meeting is held, *which shall not be later than ….*

11. The tenderer must register an account on SAP-Ariba before the hand-over meeting. The link and information to register the Ariba account is provided below:

http://www.nra.co.za/sap-ariba/

Contact procurementSR2@sanral.co.za for queries regarding SAP Ariba registration.

12. Notwithstanding that a full, original-signed copy of the contract document containing all contract data and schedules (including that of accepted deviations) will be delivered to you, this Form of Acceptance constitutes the binding contract between us.

13. Messrs …….. act as our agent to fulfil the functions of the engineer in the administration of this contract. Please contact …… at ……. to make arrangements for the signing of the contract documents and hand-over of the site.

Proforma

SIGNATURE: ..... DATE: .....

NAME (IN CAPITALS): .....

CAPACITY: **PROVINCIAL HEAD (EASTERN CAPE)**

EMPLOYER'S NAME AND ADDRESS: **South African National Roads Agency SOC Limited**
20 Shoreward Drive, Bay West, Gqeberha, 6025

AUTHORITY TO ACT: SANRAL's Delegation of Powers Item 2.4.1.2

AS WITNESSES:

1..... .....

SIGNATURE NAME (IN CAPITALS)

2..... .....

SIGNATURE NAME (IN CAPITALS)

C1.1.3 APPENDIX TO FORM OF ACCEPTANCE

CONTRACT SANRAL X.003-094-2025/1
FOR THE ROUTINE ROAD MAINTENANCE OF NATIONAL ROUTES R67 SECTION 2 (KM 36.19) TO SECTION 4 (KM 43.43) AND NATIONAL ROUTE R63 SECTION 12 (KM 16.34) TO SECTION 13 (KM 59.40)

Schedule of deviations

1. **The extent of deviations from the tender documents issued by the Employer before the tender closing date is limited to those permitted in terms of the conditions of tender.**
2. **A tenderer's covering letter shall not be included in the final contract document. Should any such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.**
3. **Any other matter arising from the process of offer and acceptance, either as a confirmation, clarification or change to the tender documents and which it is agreed by the parties, becomes an obligation of the contract, shall also be recorded here.**
4. **Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final Contract.**

The deviations listed below constitute agreed deviations/amendments to the tender document negotiated between the tenderer and Employer based on information provided in Form A4: Schedule of Deviations or Qualifications by Tenderer or imposed conditions of award. Addenda issued during the tender period are deemed not to be deviations to the tender.

1. Subject: .....

   Details: .....

2 Subject: .....

   Details: .....

3 Subject: .....

   Details: .....

4 Subject: .....

   Details: .....

Proforma

By the duly authorised representatives signing this agreement, the Employer and the tenderer agree to and accept the schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance.

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

C1.1.4 TAX COMPLIANCE PERMISSION DECLARATION

CONTRACT SANRAL X.003-094-2025/1
FOR THE ROUTINE ROAD MAINTENANCE OF NATIONAL ROUTES R67 SECTION 2 (KM 36.19) TO SECTION 4 (KM 43.43) AND NATIONAL ROUTE R63 SECTION 12 (KM 16.34) TO SECTION 13 (KM 59.40)

Note:
In terms of National Treasury Instruction No. 9 of 2017/2018 on Tax Compliance Status verification, read with the Public Finance Management Act, 1999 (Act No. 1 of 1999) and applicable Treasury prescripts, the Contractor and its subcontractors shall provide the information and consent reasonably required for the Employer to verify their tax compliance status through the SARS Tax Compliance Status (TCS) system for the duration of the Contract.

The Contractor shall complete the declaration below.

I, ... (name)
the undersigned in my capacity as ..... (position)
on behalf of .....
..... (name of company)
herewith grant consent that SARS may disclose to the South African National Roads Agency SOC Limited (SANRAL) our tax compliance status on an ongoing basis for the contract term.

For this purpose, our unique security personal identification number (PIN) is ..... ,
our tax reference number is ……..….. .

In addition, the Contractor shall obtain and retain the consent and TCS information required to enable the Employer to verify the tax compliance status of each subcontractor and other contracting entity where verification is required by law or applicable Treasury prescripts. The Contractor shall provide the relevant SARS TCS PIN and tax reference details when requested by the Employer; a historic tax clearance certificate shall not be required where verification is performed through the SARS TCS system.

SIGNATURE: .....

DATE: .....

C1.2 CONTRACT DATA

C1.2.1 CONDITIONS OF CONTRACT

The Conditions of Contract comprise the "General Conditions", which form part of the "Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, First Edition 1999", published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the "Particular Conditions", which include amendments and additions to such General Conditions.

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PART A: GENERAL CONDITIONS – FIDIC AMENDMENTS

Up to 1 September 2026 the following amendments have been issued by FIDIC

ERRATA to the First Edition, 1999

The following significant errata are corrected in this reprinting of the First Edition of the Construction Contract. Several minor typographical errors and layout irregularities have also been corrected.

GENERAL PROVISIONS

Foreword	In figure "Typical sequence of Payment Events envisaged in Clause 14", change "14.11 Contractor issues Final Statement ..." to "Contractor submits Final Statement ...".
Page 2	In the middle of the third line of Sub-Clause 1.1.2.9, delete "under".
Page 26	In the title of Sub-Clause 8.1, substitute "Works" for "Work".
Page 56	In the penultimate line, delete the parentheses "(" and ")".
Page 60	Sub-Clause 20.3, in the line following sub-paragraph (d), delete "Particular Conditions" and substitute "Appendix to Tender".
Page 68	In the third line of Clause 9, delete the two words "notice to".

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS

Page 14	Under Sub-Clause 14.9, delete "EXEMPTION" and substitute "RETENTION".
Annexes	Delete "© FIDIC".

PART B: PARTICULAR CONDITIONS OF CONTRACT

The following additional amendments to the FIDIC Conditions of Contract 1999 apply to this contract.

SUBJECT INDEX

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Insurance against Injury to Persons and Damage to Property	18.4		
Insurance for Contractor's Personnel	18.2		
Insurance for Works and Contractor's Equipment	14.6		
Issue of Interim Payment Certificates			

PARTICULAR CONDITIONS AMENDING THE GENERAL CONDITIONS OF FIDIC

1.1 DEFINITIONS

1.1.1 The Contract

Replace 1.1.1.1 with:

" "**Contract**" means the Form of Offer and Acceptance, Contract Data, these Conditions, the Specifications, the Drawings, the Schedules, and the further documents (if any), which are listed in the Form of Offer and Acceptance, and further includes drawings and documents or parts thereof, which any of the aforesaid documents incorporate by reference."

Replace 1.1.1.3 with:

" "**Letter of Acceptance**" means the Form of Acceptance as contained in part C1.1.2 of the contract documents."

Replace 1.1.1.4 with:

" "**Letter of Tender**" means the Form of Offer as contained in part C.1.1.1 of the contract document."

Replace 1.1.1.5 with:

" "**Specification**" means that document entitled Scope of Work, as included in the Contract, and any additions and modifications to the Scope of Work in accordance with the Contract. Such document specifies the Works."

Replace 1.1.1.7 with:

" "**Schedules**" means the document(s) completed by the Contractor and submitted with his tender offer, as included in the Contract. Such document(s) may include the Bill of Quantities, data lists and schedules of rates and/or prices."

Replace 1.1.1.8 with:

" "**Tender**" means that section of the Form of Offer and Acceptance called 'Offer' and all other documents which the Contractor submitted as Returnable Documents, as included in the Contract."

Replace 1.1.1.9 with:

" "**Appendix to Tender**" means the completed section entitled C1.2.2 Contract Data – Information provided by the Employer included in the Contract Data:"

1.1.1.10 - Add the following:

" "**Bill of Quantities**" shall also mean the Pricing Schedule as contained in section C2.2 of the contract document."

Add the following:

"1.1.1.11 "**Letter of Access to the Site**" means a letter issued by the Employer to give the Contractor right of access in accordance with Sub-Clause 2.1 [Right of Access to the Site]"

1.1.2 Parties and Persons

Add the following:

"1.1.2.11 "**Supplier**" means a sole trader, partnership or legal entity that owns, operates or maintains a store, warehouse or other establishment in which goods are bought kept in stock and regularly sold to wholesalers, retailers or the public (or all three) in the usual course of business.

"1.1.2.12 "**Targeted Enterprise**" means an enterprise defined in Part D stakeholder and community liaison, and targeted labour and targeted enterprises utilisation and development.

"1.1.6.11 "**Contract Footprint**" means the roads, road reserves, SANRAL-owned properties and associated road assets described in Part C3, together with any additional road or asset formally incorporated into the Contract in accordance with the Contract."

"1.1.6.12 "**Transferred Road**" means a provincial or other public road, or part thereof, that becomes a national road or for which SANRAL formally assumes responsibility during the Contract Period and that the Employer incorporates into the Contract Footprint by written instruction or Variation."

1.1.3 **Dates, Tests, Periods and Completions**

Replace 1.1.3.9 with:

"A "**day**" means a calendar day, except for any extension of time that is granted under sub-clause 8.4, [Extension of Time for Completion], in which case a day means a working day. A "**year**" means 365 calendar days".

1.2. INTERPRETATION

Add the following:

However, such notice, instruction, consent or request is not deemed to have been delivered by virtue of its appearance in the minutes of meetings."

1.5. PRIORITY DOCUMENTS

Insert the following at the end of the first paragraph before the colon:

"… unless specifically stated otherwise in the contract:".

Replace sub-paragraphs items (a) to (h) with:

"(a) the Forms of Offer and Acceptance
(b) the Appendix to Tender within the Contract data
(c) the Particular Conditions of Contract
(d) the General Conditions
(e) the project Specification (Scope of Works (Part C3))
(f) Part D Stakeholder and community liaison,
(g) the project Drawings,
(h) the standard Specifications,
(i) the Bill of Quantities (Pricing Data (Part C2)); and
(j) the Schedules and any other documents forming part of the Contract."

1.6 CONTRACT AGREEMENT

Replace the 1st two sentences with the following:

"The Parties shall enter into a Contract Agreement when the Employer issues the Form of Acceptance (see Particular Condition 1.1.1.3). The Contract Agreement shall be in the form prescribed in the tender documents"

1.7 ASSIGNMENT AND CESSION

"Neither Party shall assign or transfer the whole or any part of the Contract, or any right or obligation under it, except with the prior written consent of the other Party and subject to applicable law and the Employer's procurement and delegation requirements.

However, either Party may cede its right to payment of monies due or to become due under the Contract only where:

(a) the Cession is in favour of a registered Financial Services Provider (FSP) or a State Institution established for the express purpose of providing funding to businesses and entities; and

(b) the written request for Cession is made by the Party and not a third party; and
(c) the written request by the Party is accompanied by a cession agreement; and
(d) the other Party agrees to the Cession."

1.8 CARE AND SUPPLY OF DOCUMENTS

In the 1st paragraph, 2nd line, change "two copies" to "one copy".

In the 2nd paragraph, 3rd line, change "six" to "two".

1.11 CONTRACTOR'S USE OF EMPLOYER'S DOCUMENTS

At the end of the 1st sentence add:

"as well as any research, innovation, industry cutting edge technology and any form of trials undertaken as part of the Contract."

3.1 ENGINEER'S DUTIES AND AUTHORITY

After the 3rd paragraph insert the following:

"In addition to the actions stipulated in the General Conditions whereby the Engineer shall first obtain the approval of the Employer, the Employer's approval shall also be obtained before taking any action under sub-clauses 8.1, 8.4, 8.8, 10.1,11.9, 13.3 and 20.1 as amended in these Particular Conditions".

Add the following new sixth paragraph:

"If the Engineer is a legal entity, a natural person employed by the Engineer and approved by the Employer shall be appointed and authorised to act as the Engineer under the Contract.

The Engineer shall obtain the Employer's prior written approval before waiving, relaxing or materially reducing any specified quality-control requirement, testing frequency, hold point, macrotexture requirement, surface-regularity requirement or riding-quality requirement applicable to a Large-area Repair or Large-area Surface Treatment, or before accepting reduced payment or other conditional acceptance in lieu of rectification of non-conforming work."

4.1 CONTRACTOR'S GENERAL OBLIGATIONS

Add the following sentence to the 1st paragraph:

"With regard to the Contractor's proposals submitted under the item of the Scope of Works entitled "Part D Stakeholder and Community Liaison and Targeted Labour and Targeted Enterprise utilisation and development", if the Contractor fails to provide the employment or training to the extent proposed, the Employer may impose penalties as set out in the above-mentioned Scope of Works."

"The Contractor shall maintain, for the full Contract Period, the 24-hour emergency response capability, standby resources, communications, equipment and trained personnel specified in Part C3 and shall respond to incidents affecting the safety, availability or integrity of the Contract Footprint in accordance with the RIMS protocols and the Engineer's or Employer's lawful instructions."

"Where an emergency requires immediate action to protect life, road users, property, the environment or continuity of the national road network, the Contractor shall carry out the immediate make-safe, traffic accommodation and emergency normalisation measures reasonably necessary and shall not delay such measures solely because the final valuation or Works Authorisation has not yet been agreed. The valuation and payment of instructed work not already covered by Contract rates shall thereafter be dealt with under Clauses 12 and 13."

"All Large-area Repairs and Large-area Surface Treatments, as defined in the Scope of Works, shall comply with the quality-control and finished-surface requirements of Clause C3.1.7.14.
The Contractor shall establish, implement and maintain the required process quality-control system and shall provide all Quality Plans, Inspection and Test Plans, method statements, process-control testing and quality records required by that Clause.

Acceptance by the Engineer of any investigation, design, material source, mix design, method statement, Quality Plan, Inspection and Test Plan, trial section or completed work shall not relieve the Contractor of responsibility for compliance with the Contract.

Where non-compliance results from the Contractor's design, materials, workmanship, plant, process or failure to exercise proper process control, all investigation, remedial work and retesting necessary to achieve compliance shall be at the Contractor's cost."

4.2 PERFORMANCE SECURITY

Replace the 2nd paragraph with:

"The Contractor shall deliver the Performance Security to the Employer within 14 days of the date of issue of the Form of Acceptance and shall send a copy to the Engineer. The Performance Security shall be issued by a bank or insurance company registered or licensed as a bank or insurance company to do business in the Republic of South Africa and approved by the Employer and having an office or banking facility in the Republic of South Africa. The Performance Security shall be subject to approval by the Employer and shall be in the form prescribed in the tender documents.

The employer is entitled to utilise the performance security for the intended purpose, to hold same as security for the Contractor's performance. However, the Employer is likewise entitled to negotiate with the bank or insurance company registered or licenced as a bank or insurance company in order to allow for the cession of the contract agreement to a replacement contractor, in terms of sub clause 1.7, as agreed between the said bank or insurance company and the insured contractor, subject to the approval of the Employer.

The basis for the cession of the insured contractor, to a replacement contractor, must accord with the Employer's internal Supply Chain Management and Procurement policies. "

*In the last line of the last paragraph replace the words "*Performance Certificate*" with* "Taking-Over Certificate".

4.4 SUBCONTRACTORS

Change the title to read "**Subcontractors and suppliers**"

In the first paragraph delete "the whole of the Works" *and add* "any percentage of the Works without the express approval of the Employer".

In the 1st line of the 2nd paragraph, after the word "Subcontractor" replace the expression "his agents or employees" *with* "suppliers, their agents or employees".

Add the following sub-paragraphs:

"(e) The Contractor shall enter into a written subcontract agreement with the Subcontractor. The subcontract agreement between the Contractor and the Subcontractor shall be the standard FIDIC subcontract agreement (version 2011).

(f) If the Contractor is required to employ one or more Subcontractors under his targeted enterprise development, then the provisions of Sub-Clause 5.4 [*Evidence of Payments*] shall apply as if such Subcontractor is a Nominated Subcontractor.

(g) Each subcontract shall include the provisions:
  (i) The Contractor undertakes to pay the Subcontractor the full value as certified by the Engineer as being due to the Subcontractor in each Interim Payment Certificate, without any deduction for plant, equipment, materials or fuel supplied by the Contractor. Any assistance that the Contractor may have made to the Subcontractor that requires recovery from the Subcontractor, will be recovered by the Contractor through normal commercial debt repayment processes;
  (ii) The Contractor undertakes to make payment within 14 days after the date on which the Subcontractor has submitted a statement for payment or a claim for payment to the Contractor for work completed or goods delivered in accordance with the Contract between the Contractor and Subcontractor;

(h) The Contractor shall disclose all subcontracting arrangements.

(i) The total retention money held for all subcontractors shall not exceed the maximum value of the retention money as specified under Sub-Clause 14.3(c) and shall be held pro-rata per subcontractor.
(j) 50% of the retention money held for each Subcontractor shall be released on completion of the subcontract works. The remainder of the Subcontractor's retention money shall be released when a Subcontractor's work does not show any defect within 6 (six) months after the completion of the subcontract. However, the Subcontractor's retention money may be withheld but only if the Performance Certificate is unable to be issued because of defective workmanship attributable to the Subcontractor.
(k) All Subcontractors and suppliers shall be registered on the National Treasury's Central Supplier Database (CSD).
(l) All Subcontractors shall be in good standing in terms of COIDA and shall be registered with the Bargaining Council for the Civil Engineering Industry (Government Notice R.490 – Part III contained in Government Gazette No. 37750) or other relevant Bargaining Council.
(m) All Subcontractors shall be registered with the CIDB in the appropriate category for the class of work to be performed.
(n) The procurement and appointment of all subcontractors shall follow the process as stipulated in Part D: Stakeholder and community liaison, and targeted labour and targeted Enterprises utilisation and development.

If the Contractor fail to disclose all subcontracting agreements, or fail to comply with the requirements of this clause he shall be given 14 days to make representation as to why the contract shall not be terminated;

However, a failure of the Contractor to disclose all subcontracting agreements or to comply with the requirements contained under this clause, shall attract a penalty up to 10% of the value of the contract.

4.7 SETTING OUT

Amend the second line of the second paragraph to read:

"……reference, provided that the Contractor shall provide proof of their inaccuracy before they are used."

4.10 SITE DATA

In the 1st paragraph, 1st sentence, replace "prior to the Base Date" *with* "either as part of or by reference in the Tender Documents or, otherwise, not later than 7 days before the latest date for submission of the Tender Documents", *and delete the 2nd sentence*.

4.17 CONTRACTOR'S EQUIPMENT

Add the following paragraph:

"The Contractor shall notify the Engineer, in writing, of the names and addresses of the owners of all major items of equipment not owned by the Contractor within 21 days of it arriving on Site."

4.19 ELECTRICITY, WATER AND GAS

In the 1st paragraph, 1st line, delete "except as stated below", *and delete the 2nd and 3rd paragraphs*.

4.21 PROGRESS REPORTS

In the 1st paragraph, 2nd line, delete "in six copies".

Add the following at the end of the 3rd paragraph:

"(i) Comparison of estimated Contract Price and the original Contract Price as stated in the form of Acceptance, with details of any events or circumstances which may result in the original Contract Price to be exceeded, and the measures being (or to be) adopted to prevent this.
(j) SHE audits, SHE incidents, traffic accidents, Environmental management report, employment, empowerment and training reports (extracted from Employer system), training plan, communication plan, media information, site memos, drawings issued, mix designs, work authorisations, daywork, programme, sub-standard work, cashflow and expenditure, claims, risk report and penalties."

4.22 SECURITY OF THE SITE

Replace the fullstop at the end of subclause (b) with a comma and continue this clause as follows:

" and authorised utility or service owners whom the Employer or the Engineer identifies as having also been authorised. Without said notice, the Contractor may refuse access to such utility or service owners; and"

4.24 FOSSILS

In the 1st paragraph, 1st sentence after "fossils" *insert* "and graves" *and in the 2nd sentence, add* "and shall indemnify the Employer against any liability arising from such loss or damage."

6.2 RATES OF WAGES AND CONDITIONS OF LABOUR

Add the following:

"The conditions as stated in the Appendix to Tender shall also apply."

6.5 WORKING HOURS

Replace the 1st sentence with the following:

"No work shall be carried out on Site on any special non-working day or within the non-working hours of any day as stated in the Appendix to Tender, unless:"

6.7 HEALTH AND SAFETY

In the 1st paragraph delete the 2nd sentence.

Add the following as a new 4th paragraph:

"The Contractor and his Subcontractors shall be in good standing in terms of the Compensation for Occupational Injuries and Disease Act (COIDA) and have a letter as proof.

Add the following as a new 5th paragraph:

"The Contractor shall also comply to the requirements of the Scope of Works part C3.5: Occupational Health and Safety Specification."

6.9 CONTRACTOR'S PERSONNEL

Add the following new subparagraphs to the 1st paragraph:

"(e) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice; or
(f) has been recruited from the Employer's Personnel in breach of sub-clause 6.3 [Persons in the Service of Employer]."

Add the following as a final paragraph:

"The requirements for key personnel as stated in the Appendix to Tender shall also apply."

8.1 COMMENCEMENT OF WORK

In the 1st paragraph, delete the 1st sentence, and in the 2nd sentence replace "42 days after the Contractor receives the Letter of Acceptance" *with* "28 days of the date of issue of the Form of Acceptance, unless otherwise stated in the Appendix to Tender."

In the 2nd line of the 2nd paragraph, after the words "Commencement Date", *insert* "but within the period stated in the Appendix to Tender."

8.3 PROGRAMME

Replace the 1st sentence of the 1st paragraph with "The Contractor shall submit a detailed programme to the Engineer within 14 days of the Commencement Date."

Add to the items to be included in the programme the following sub-paragraph:

"(e) The Contractor's cash flow forecast.
(f) Documented details of the contractor's environmental mitigation measures and health and safety plans in respect of all construction activities"

In the 2nd paragraph replace "21" *with* "14".

8.4 EXTENSION OF TIME FOR COMPLETION

Replace the word "Engineer" *with* "Employer" *in the last sentence of the last paragraph.*

8.7 DELAY DAMAGES

Change the marginal heading of this clause to read "Delay Damages and Other Non-compliance Charges" *and insert the following as a first paragraph to this clause:*

"Delay damages and other payments to the Employer for late delivery, failure to achieve intra-programme due dates or non-compliance events shall apply as follows:"

Keep the existing two paragraphs unchanged and number as subclause (a) and add the following subclause relating to other non-compliance charges:

"(b) If the Contractor fails to comply with the requirements detailed in the Specification regarding duration of accommodation of traffic closures, meeting intra-programme dates, Accommodation of Traffic requirements, overloading, Contract Participation Targets, subcontracting, quality of work, including failure to implement an accepted Quality Plan or Inspection and Test Plan, failure to perform the specified process-control testing, and failure of a Large-area Repair or Large-area Surface Treatment to comply with the specified material, compaction, dimensional, surface-regularity, macrotexture or riding-quality requirements, submission of information and performance criteria, failure to notify the Engineer and Employer of a third-party claim or incident within the period stated in Sub-Clause 17.1 [Indemnities], failure to notify the Contractor's insurer and/or broker or provide proof of notification and the insurer's claim/reference number as required under Sub-Clause 17.1, failure to maintain in force or provide evidence of the third-party liability insurance required under Clause 18 [Insurance] and the Contract Data, or failure to cooperate with the Engineer and Employer in the reporting, investigation, assessment, defence, management or processing of a third-party claim in accordance with Sub-Clause 17.1, the Contractor shall pay non-compliance charges to the Employer for this default. These non-compliance charges shall be calculated at the rates stated in the Appendix to Tender, which shall be applied for each incident of non-compliance. Any non-compliance charge arising from defective or non-conforming work shall be without prejudice to the Contractor's obligation to investigate, rectify and retest the affected work at its own cost.

These non-compliance charges shall be the only charges due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works. These charges shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract."

(c) Notwithstanding sub-paragraph (b) above, where the Contractor:

(i) fails to maintain in force the third-party liability insurance required under Clause 18 and the Contract Data, in which event the Engineer may, with the Employer's approval, instruct suspension of affected non-emergency work until satisfactory evidence of reinstated cover is provided;
(ii) fails to restore or provide satisfactory evidence of the required insurance within 48 (forty-eight) hours after written notice, or the lapse continues for more than 7 (seven) calendar days;
(iii) admits liability, negotiates, compromises or settles a third-party claim in breach of Sub-Clause 17.1 and thereby causes material prejudice to the Employer;
(iii) fails or refuses to notify its insurer of a potentially covered claim, fails to cooperate materially in the defence or management of the claim, or rejects, repudiates or declines a third-party claim without reasonable grounds and the claim is subsequently upheld, wholly or in part, against the Employer by a court, arbitrator or adjudicator; or

such failure shall, where material and subject to any Notice to Correct required under Sub-Clause 15.1 where the breach is capable of remedy, constitute a material breach of Contract entitling the Employer

to exercise its rights under Sub-Clause 15.2 [Termination by Employer], without prejudice to any indemnity, reimbursement, suspension, set-off or other remedy available to the Employer under the Contract or in law

8.9 CONSEQUENCES OF SUSPENSION

In the 1st paragraph, delete the wording of sub-paragraph (b) and replace with the following:

"(b) payment of Cost. The Cost payable shall be the Suspension cost calculated in pay item M030.03(a) as appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned."

10.2 TAKING OVER OF PARTS OF THE WORKS

Delete the 2nd paragraph.

Between the 3rd and 4th paragraphs insert the following paragraph:

"The Employer may make use of any part of the Permanent Works prior to the issue of a Taking Over-Certificate."

Delete the 5th paragraph.

11.9 PERFORMANCE CERTIFICATE

In the 1st paragraph, 2nd line and in the 2nd paragraph, 1st line, replace the word "Engineer" *with* "Employer".

Delete the last sentence of the 2nd paragraph.

11.11 CLEARANCE OF SITE

Replace the 1st paragraph with the following:

"With the exception of Plant, Materials and Contractor's Equipment required to complete any outstanding work or to remedy defects or damage as notified by, or on behalf of, the Employer and which Plant, Materials and Contractor's Equipment have been agreed by the Engineer and the Contractor, the Contractor shall, upon receipt of the Taking-Over Certificate, remove all Contractor's Equipment and surplus material, wreckage, rubbish and Temporary Works, from the Site unless otherwise instructed by the Engineer."

In the 2nd paragraph, replace "after the Employer receives a copy of the Performance Certificate" *with* "after the issue of the Taking-Over Certificate".

12.3 EVALUATION

Replace the second sentence of paragraph two with the following:

"However a new rate or price shall be appropriate for an item of work only if notice has been given and if ..."

In sub-paragraph (a)(iv) replace the word "Contract" *with* "Appendix to Tender".

13.3 VARIATION PROCEDURE

Add the following after the 3rd paragraph:

"The Engineer shall obtain the approval of the Employer prior to issuing an instruction to execute a Variation.

Each instruction issued by the Engineer to the Contractor to execute a Variation, unless the Variation is to be executed on a Daywork basis, shall be a written instruction presented in the form of a Works Authorisation (WA). The Works Authorisation Form (WAF) shall be presented by the Engineer to the Employer, who shall signify his approval before the order is signed by the Engineer and issued to the

Contractor, who shall acknowledge his acceptance by signing the order. The Contractor shall not accept a Works Authorisation that is not approved and signed by the Employer.

If the Contractor considers that an instruction constitutes a Variation, the Contractor shall immediately, and before commencing any work related to an instruction, give a notice to the Engineer with reasons for deeming such instruction a Variation and furnish the Employer with a copy thereof. If the Engineer does not respond within seven days confirming, revoking or varying the instruction, the Engineer shall be deemed to have revoked the instruction."

"The incorporation of a Transferred Road into the Contract Footprint shall be effected by written instruction or Variation in accordance with Part C3. The instruction shall identify, as far as reasonably practicable, the road limits, effective responsibility date, baseline condition information, available asset data, funding and payment mechanism, and any interim emergency obligations. The Contractor shall cooperate with the joint handover and baseline survey and shall update its programme, resource plan, emergency arrangements and cash-flow forecast accordingly."

13.5 PROVISIONAL SUMS

In the 1st line of sub-paragraph (b) after "services" *insert* "and including items for which a prime cost sum has been provided in the Bill of Quantities".

Add the following after the last paragraph:

"The Contractor and Engineer shall follow the procedure as specified in the Project Specification for each Provisional Sum and Prime Cost Sum, prior to any work performed under a Provisional Sum or Prime Cost Sum."

13.8 ADJUSTMENTS FOR CHANGES IN COSTS

Delete from the third sentence of the third paragraph until the end of the sub-clause and substitute:

"The formula shall be as follows:

$$Pt = (1 - x) [(a\ Lt/Lo) + (b\ Et/Eo) + (c\ Mt/Mo) + (d\ Ft/Fo) - 1]$$

where:

"Pt" is the adjustment multiplier, rounded to the fourth decimal place, to be applied to the estimated contract value of the work carried out in period "t", this period being a month unless otherwise stated in the Appendix to Tender;

"x" is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

"a", "b", "c" and "d" are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour (L), equipment (E), materials (M) and fuel (F);

"Lt", "Et", "Mt" and "Ft" are the current cost indices for period "t", each of which is applicable to the relevant tabulated cost element on the last day of the period (to which the particular Payment Certificate relates); and

"Lo", "Eo", "Mo" and "Fo" are the base cost indices, each of which is applicable to the relevant tabulated cost element on the Base Date.

The base cost indices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If more than one month intervenes between the month applicable to any Interim Payment Certificate and the month applicable to the immediately succeeding Interim Payment Certificate, then the cost indices "Lt",

"Et", "Mt" and "Ft" applicable to the succeeding Interim Payment Certificate shall each be taken as the arithmetic mean, rounded off to one decimal place, of the relevant indices applicable to the month of measurement and to such intervening months.

The value of the relevant Interim Payment Certificate to which the adjustment is to be applied shall be determined by the formula:

Ac = T – S – D – G – Ap

where:

"Ac" is the value of work carried out in period "t" to which the adjustment is to be applied;

"T" is the summation of the total value of the preliminary and general items, and the work done, as certified in the Interim Payment Certificate under consideration without any deduction whatsoever and before any adjustment made in terms of this Sub-Clause.

"S" is the aggregate of (i), (ii), (iii) and (iv), referred to below, and included in "T" where special arrangements for price adjustments in respect of these amounts were made and recorded at the time the work was ordered:

(i) the amounts actually expended and substituted for any prime cost sums,
(ii) the value of any work done by Nominated Subcontractors,
(iii) the value of any work done against Provisional Sums, and
(iv) the value of any extra or additional work done under a Variation.

"D" is the value of work included in "T" and done at new rates fixed in terms of Sub-Clause 12.3, where those rates are not based on labour, Contractor's Equipment or Materials costs in force at the time of tendering. Generally new rates may be based on current costs and de-escalated to the Base Date of the indices, in which case work done at these rates shall not be included in the value of "D".

"G" is the amount included in "T" for Materials classified and dealt with as Special Materials.

"Ap" is the summation of all "Ac" amounts determined for all Payment Certificates preceding in time the Payment Certificate under consideration.

Save only for Variations ordered to be carried out after the Time for Completion has expired, the Contract Price adjustment factor to be applied to certificates relating to work done or materials supplied after the expiry of the Time for Completion shall be calculated by inserting in the formula referred to in this Sub-Clause the cost indices Lt, Et, Mt and Ft applicable either (i) 49 days prior to the date of expiry of the Time for Completion, or (ii) for the current month: whichever is more favourable to the Employer.

The price of each Special Material specified in the Appendix to Tender shall be increased or decreased by the net amount of any change in price incurred after the Base Date, provided that any claim for adjustment in terms hereof shall be substantiated by the submission of acceptable invoices and any other supporting documents which the Engineer considers necessary for that purpose. However, except for Variations ordered in terms of Clause 13 [*Variations and Adjustments*] all adjustments after expiry of the Time for Completion shall be based on the price of each Special Material either (i) 49 days prior to the date of expiry of the Time for Completion, or (ii) for the current month: whichever is more favourable to the Employer.

For the purpose of this Sub-Clause, "the net amount of any change in price" in respect of a particular Material referred to as a Special Material shall be calculated by multiplying the difference between the rate or price entered in the Contract by the Contractor for that Special Material and the equivalent rate or price actually paid by the Contractor for the Special Material by the quantity of the Special Material in question."

14.1 THE CONTRACT PRICE

Add the following new clause (e):

"(e) the Contractor shall submit to the Engineer within 28 days after the Commencement Date a full breakdown of all rates. The Engineer may take account of the breakdown when evaluating claims and making Determinations."

14.3 APPLICATION FOR INTERIM PAYMENT CERTIFICATES

In the 1st line of the 1st paragraph, delete "in six copies."

In the 4th line of the 1st paragraph, change "the report" *to* "reports."

In the 2nd paragraph, sub-paragraph (c), after "above amounts" *insert* "and 80% of the value of Materials on Site"

Add the following as a final paragraph:

"If, as stated in the Appendix to Tender, a Retention Money Guarantee is permitted and the Contractor elects to furnish it, the guarantee shall, at the cost of the Contractor, be executed by an insurance company or bank in a form approved by the Employer.

The said company or bank shall be registered or licensed to do business in the Republic of South Africa and shall have an office and banking facility in the Republic of South Africa and shall be subject to approval by the Employer.

The aggregate liability under the guarantee shall be the maximum amount of retention monies to be retained by the Employer, which amount shall be as stated in the Appendix to Tender.

Other conditions, if any, additional to the above standard conditions shall be as stated in the Appendix to Tender.

The guarantee shall expire on the date on which the last of the retention monies (which, but for the guarantee, would have been retained by the Employer) becomes payable to the Contractor.

The guarantee shall be returned to the guarantor upon final payment of the aggregate liability or on the date of expiry, whichever is the earlier."

14.5 PLANT AND MATERIALS INTENDED FOR THE WORKS

In the 1st paragraph delete "If this Sub-Clause applies".

In the 1st paragraph, after the words, "… sent to the Site for incorporation in the Permanent Works," *add* "or if so agreed in writing by the Employer, Plant and Materials intended for incorporation in the Permanent Works and stored at places other than the Site, and clearly demarcated and identified it as the Employer's property,"

Delete the 2nd paragraph.

In the existing 3rd paragraph add under sub-paragraph (a):

"(iii) ensured that the relevant Plant and Materials have been delivered to and are properly stored on the Site, are protected against, loss, damage, deterioration, and appear to be in accordance with the Contract; and

(iv) provided proof of ownership of the Plant and Materials; and

(v) for Plant and Materials kept off-site, clearly demarcated and identified it as the Employer's property."

In the existing 3rd paragraph, delete sub-paragraphs (b) and (c)

14.6 ISSUE OF INTERIM PAYMENT CERTIFICATES

In the 2nd line of the 1st paragraph replace "28" *with* "7"

Add the following new sentences at the end of the first paragraph:

"The date on which the Contractor submits his Statement to the Engineer shall not be later than the 15th of a calendar month. Interim Payment Certificate issued by the Engineer shall not be later than the 22nd of a month. The Contractor shall not delay interim payment certificates for any reason. No measurement and payment dispute by the contractor shall delay an Interim Payment Certificate. Disputes can be evaluated in the following month and if found valid can be corrected and incorporated in the subsequent certificates. If the Contractor fails to make payment to subcontractors of any sum properly due and payable Clause 14.9 Delayed Payment under the Subcontract in the FIDIC Conditions of Subcontract will apply."

14.7 PAYMENT

In sub-paragraphs (b) and (c) of the 1st paragraph replace "56" *with* "28".

In sub-paragraphs (b) of the 1st paragraph replace "supporting documents" *with* "all supporting documents required in terms of the contract;"

Delete the 2nd paragraph.

14.8 DELAYED PAYMENT

Replace the 2nd paragraph with the following:

"These financing charges shall be at the rate prescribed in terms of the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975)".

14.9 PAYMENT OF RETENTION MONEY

In the 1st sentence of the 1st paragraph, after the word "Works", add the following:

"and all outstanding work and defects as stated in the Taking-Over Certificate have been completed"

14.10 STATEMENT AT COMPLETION

In the 2nd line of the 1st paragraph delete "six" and replace with "three".

14.11 APPLICATION FOR FINAL PAYMENT CERTIFICATE

In the 2nd line of the 1st paragraph delete "six" and replace with "three".

15.1 NOTICE TO CORRECT

Add the following at the end of the paragraph:

"The Notice to correct shall:

(a) describe the Contractor's failure;
(b) state the Sub-clause and/or provisions of the Contract under which the Contractor has the obligation; and
(c) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.

After receiving a Notice to Correct the Contractor shall immediately respond by giving a Notice to the Engineer describing the measures the Contractor will take to remedy the failure and stating the date on which such measures will be commenced in order with the time specified in the Notice to correct.

The time specified in the Notice to Correct shall not imply any extension of Time for Completion."

15.2 TERMINATION BY THE EMPLOYER

In the 1st paragraph replace the 1st sentence with the following:

"The Employer shall be entitled to give a Notice to Terminate to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph e) or f) below, a Notice of Termination, if the Contractor:"

In sub-paragraph (d), after the words "…the requirement agreement," add the following "fails to disclose its subcontractor agreements,"

In sub-paragraph (e), after the words "… or carries on business under a receiver," add the following "or under a business rescue practitioner,"

Delete the word "or" *at the end of sub-paragraph (e) and replace sub-paragraph (f) with the following*:

"(f) gives or has given, offers to give or has offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer or State Department or Organ of State, or
(ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer or State Department or Organ of State,

or if any of the Contractor's Personnel, agents or Subcontractors gives or has given, offers to give or has offered to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination,"

"(g) commits a material or repeated breach of Sub-Clause 17.1 [Indemnities and Third-Party Claims] or Clause 18 [Insurance], including a failure to maintain the required third-party liability insurance or to comply with the claims notification, cooperation, defence or reimbursement obligations, and fails to remedy the breach within the period stated in a Notice to Correct under Sub-Clause 15.1 where the breach is capable of remedy, or where the breach causes material prejudice to the Employer which is not reasonably capable of remedy."

17.1 INDEMNITIES

In the 1st paragraph delete "and" *at the end of sub-paragraph (b)(i).*

Delete the full stop at the end of sub-paragraph (b)(ii) and substitute "," *and insert the following sub-paragraphs:*

"(c) the loss of output and delay caused by the slowing down or partial or total stoppage of work caused by:
(i) all or any of the Contractor's Personnel or ex-Personnel as a result of a dispute between all or any of the Contractor's Personnel or dismissed Contractor's Personnel and the Contractor, or all or any of the Subcontractor's Personnel and the Subcontractor, and
(ii) all or any of the Contractor's Suppliers' difficulty or impossibility to deliver goods or materials needed to perform the Works,
(d) any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel or dismissed Contractor's Personnel,
(e) any liability for damage incurred to, or loss of, property within the site identified in the contract documents as not belonging to the Employer regardless of whether or not such damage or loss is caused by the Contractor's equipment,
(f) all damages, losses and expenses (including legal fees and expenses) resulting from the loss of output and delay caused by the slowing down or partial or total stoppage of work caused by:
(i) all or any of the Contractor's workforce (or dismissed Contractor's Personnel) as a result of a dispute between all or any of the Contractor's Personnel (or dismissed contractor's Personnel) and the Contractor; or
(ii) all or any of the Contractor's suppliers' difficulty or impossibility to deliver goods or materials needed to perform the Works, and
(g) harm or damage to the environment caused in the performance of the Works,
(h) 3rd party claims for damages (such as pothole claims) resulting from the use of the Road upon which the Contractor is appointed for in terms of this Contract."

Add the following final paragraphs:

"To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*], and/or any other design under the Contract, the Contractor shall also indemnify and hold harmless the Employer against all acts, error or omissions by the Contractor in carrying out the Contractor's design obligations that result in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

The Contractor shall indemnify the Employer against any liability for physical damage incurred to, or loss of, property within the Site identified in the Contract as not belonging to the Employer regardless of whether or not such damage or loss is caused by the Contractor's equipment.

The Contractor shall notify the Engineer and the Employer in writing within 48 (forty-eight) hours of becoming aware of any incident, occurrence, act or omission which has given rise to, or may reasonably be expected to give rise to, a claim by a third party arising out of or in connection with the Contractor's performance or non-performance of the Contract, including the Works, routine maintenance, traffic accommodation, emergency response, inspections, patrols and make-safe obligations.

Where any such matter may fall within insurance cover required under Clause 18 [Insurance], the Contractor shall notify its insurer and/or broker within the period required by the applicable policy and, in any event, within 48 (forty-eight) hours of becoming aware of the matter. Within 2 (two) working days thereafter, the Contractor shall provide the Engineer and the Employer with proof of notification and the insurer's claim or reference number. The Contractor shall thereafter provide the Engineer and the Employer with all information, documentation, reports and access reasonably required to investigate, assess, manage and process the claim, and shall keep them updated on the status of the claim and the insurer's position until final resolution.

The Contractor shall authorise its insurer and/or broker to communicate directly with the Engineer and the Employer regarding notification of the claim, applicable cover, information required, claim status and settlement discussions. Such authority shall not create any right against the insurer beyond the insurance policy or applicable law. The Contractor shall not admit liability, negotiate, compromise or settle any third-party claim referred to in this Sub-Clause without the prior written consent of the Employer and, where required by the policy, the insurer. Any admission, negotiation or settlement made in breach of this paragraph shall not bind the Employer and shall be at the Contractor's own risk and cost.

Where the Engineer or Employer forwards a third-party claim to the Contractor, the Contractor shall promptly notify the insurer if the matter may be covered, investigate the claim in good faith and provide a reasoned written response to the Engineer and the Employer within 14 (fourteen) days. The response shall state the material facts, the contractual and factual grounds for the Contractor's position, the supporting evidence relied upon, and the insurer's coverage and/or liability position, if available. The Contractor shall not reject, repudiate or decline a claim solely on its own assessment without first complying with the notification and investigation obligations in this Sub-Clause.

Any rejection, repudiation, exclusion, excess, deductible, exhaustion of limit or other refusal or limitation of indemnity by the Contractor's insurer shall not relieve the Contractor of any indemnity, liability or obligation assumed under this Contract. Where a third-party claim is pursued against the Employer and the matter may fall within the Contractor's indemnity obligations under this Sub-Clause 17.1 the contractor exempts the Employer liability of 3rd party claims that arise or are submitted during the defects notification period/routine road maintenance contract. Should any party institute legal action against the Employer, the Employer will recover both the quantum and legal costs or legal costs from the contractor , the Contractor shall, upon written request, provide or procure the defence of the claim and shall cooperate fully with the Employer. The Contractor must be joined as a party in any proceedings wherein a third-party claim is pursued against the Employer. The Employer may participate in the defence and appoint its own legal or technical advisers where reasonably necessary to protect its interests.

If the Contractor or its insurer fails or refuses to provide an effective defence within 5 (five) working days after written request, or where urgent action is reasonably required to protect the Employer's position, the Employer may investigate, defend, negotiate or settle the claim. Where the matter giving rise to the claim falls within the Contractor's indemnity obligations under this Sub-Clause 17.1, the Contractor shall reimburse the Employer, in full, for:

a) the amount of any judgment, award, reasonable settlement or binding determination against the Employer; and

b) all reasonable legal, expert, investigation, claims-handling and other costs and disbursements actually incurred by the Employer in investigating, defending, managing and resolving the claim, to the extent not recovered from the insurer or another party,

as an indemnity under this Sub-Clause 17.1 and irrespective of the limitation of liability in Sub-Clause 17.6.

The Employer shall not be required to obtain the Contractor's consent to a settlement where the Contractor and its insurer have been given a reasonable opportunity to participate and the Contractor

unreasonably withholds or delays consent, fails to respond, or fails or refuses to provide an effective defence. Any settlement for which reimbursement is claimed from the Contractor shall be reasonable in the circumstances.

The obligations in this Sub-Clause relating to notification, cooperation, defence, indemnity and reimbursement shall survive completion or termination of the Contract in respect of any incident, act or omission occurring during the period of the Contract. Any amount finally due to the Employer under this Sub-Clause may be recovered as a debt or set off against amounts otherwise due to the Contractor, subject to the Employer complying with the applicable notice and determination provisions of the Contract. The Employer shall not recover twice for the same loss."

17.4 CONSEQUENCES OF EMPLOYER'S RISKS

*In the first sentence of the second paragraph, insert "*to the Works, Good or Contractor's Documents*" after the word "*damage*".*

17.6 LIMITATION OF LIABILITY

*In the third line of the first paragraph the remainder of the sentence after the word under replace "*Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.4 [Consequences of Employer's Risks]"with:

"as specifically provided for in Sub-Clause 8.7 [Delay Damages and Other Non-compliance Charges]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4 [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights]."

18.1 GENERAL REQUIREMENTS FOR INSURANCES

Add the following under Sub-Clause 18.1

The Contract Data currently provides a minimum third-party liability insurance amount of R 20 000 000. Before issue, confirm the adequacy of this limit for the specific contract and state expressly whether the limit applies per occurrence and whether any annual aggregate applies.

"The Contractor shall maintain the required third-party liability insurance continuously for the period required by the Contract. Before the Commencement Date and on each renewal, the Contractor shall provide the Employer and Engineer with an insurer- or broker-confirmed policy schedule or certificate and the relevant endorsements, showing at least the insurer, policy number, period of insurance, limit of indemnity, excess or deductible, annual aggregate basis (if any), insured parties and claims contact details. A certificate shall not replace the policy or endorsements where the Employer reasonably requires them for verification.

Unless otherwise approved in writing by the Employer, the policy shall, to the extent applicable to the required cover, provide that the Employer is included as a co-insured, additional insured or separately indemnified party for liabilities arising from the Contractor's performance or non-performance of the Contract; include cross-liability and severability of interests; provide contractual liability cover sufficient to respond to the Contractor's insurable obligations under Sub-Clause 17.1; and provide that any policy excess or deductible is for the Contractor's account. The Contractor shall also obtain non-vitiation protection, waiver of subrogation against the Employer and advance notice of cancellation or material reduction in cover where such provisions are commercially available on reasonable terms, or shall obtain the Employer's prior written approval to any departure.

If the insurance is written on a claims-made basis, the Contractor shall maintain the applicable retroactive date and continuous cover, or equivalent run-off or extended reporting cover, for not less than 36 (thirty-six) months after the Performance Certificate, unless a longer period is stated in the Contract Data.

The Contractor shall immediately notify the Employer and Engineer of any cancellation, lapse, material reduction, reservation of rights or other circumstance which may materially affect the cover required by the Contract. The Contractor shall authorise the insurer and/or broker to confirm directly to the Employer and Engineer the status of the policy and any claim notified under Sub-Clause 17.1.

The existence of insurance, any excess or deductible, any exclusion or limitation, or any rejection or repudiation of cover by the insurer shall not relieve the Contractor of any obligation or liability under the Contract. Without prejudice to the Employer's rights under Clause 18, any cost reasonably incurred by the

Employer in procuring replacement cover because of the Contractor's default shall be recoverable from the Contractor."

18.2 INSURANCE FOR WORKS AND CONTRACTOR'S EQUIPMENT

In the 4th paragraph, delete the wording of sub-paragraph (d) and replace with the following:

"(d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (g) and (h) of Sub-Clause 17.3 [*Employer's Risks*], and shall include insurance with the South African Special Risks Insurance Association (SASRIA) that cover loss or damage from the risks listed in sub-paragraph (c) of Sub-Clause 17.3 [*Employer's Risks*], and"

19.1 DEFINITION OF FORCE MAJEURE

In the 3rd line of sub-paragraph 19.1(iii) insert "or suppliers," *after the word* "Subcontractors".

19.4 CONSEQUENCES OF FORCE MAJEURE

Insert the following after the 1st paragraph:

"If, however, the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure events of the kind listed in clause 19.1 sub-paragraph (iii), the Contractor shall not be entitled to any extension of time for any such delay and shall not be entitled to payment of any such Cost, if all the following conditions are not satisfied:

(1) The Contractor has engaged with the persons responsible for the riot, commotion, disorder, strike or lockout; has met with the persons or leaders; and has recorded the persons or leaders details, their grievances, the organisations involved, all threats made; and has requested the persons or leaders to cease all unlawful conduct; and
(2) The Contractor has obtained proof of the riot, commotion, disorder, strike or lockout, and of any unlawful conduct; and
(3) The Contractor has reported all threats and unlawful conduct to the South African Police Service; and
(4) The Contractor has brought an urgent application to the court that correctly identify the respondents and define the unlawful conduct to be interdicted; and
(5) The Contractor has exhausted all available legal and other remedies to ensure that the court order is enforced."

19.5 FORCE MAJEURE AFFECTING SUBCONTRACTOR

Amend the title to read "Force Majeure Affecting Subcontractor and Supplier".

In the first line insert "or supplier" *after the word* "Subcontractor"

20.1 CONTRACTOR'S CLAIMS

In paragraph 5, insert the following after the first sentence:

"If an extension of time is granted the Contractor shall be paid such time-related Preliminary and General allowances as are appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned. Payment of costs additional to the above will only be considered if the costs derive from claims that fall within the terms of Clause 13 [Variations and Adjustments] and/or Sub-clause 17.3 [Employer's Risks]."

Replace the 6th paragraph with the following:

"After receiving a claim or any further particulars supporting a previous claim, the Engineer shall present such claim or particulars to the Employer, together with his recommendations, for a ruling, which ruling shall be given to the Contractor within 42 days after receiving a claim or any further particulars, provided that the said period of 42 days may be extended by application from one Party and approval of the other. If the Employer fails to give his ruling within the specified period, or agreed extension thereto, it shall be deemed that the Employer has dismissed the claim."

Delete the 8th paragraph.

20.2 to 20.8

Replace these sub-clauses with the following:

20.2 SETTLEMENT OF DISPUTES

(a) The Contractor shall have the right to dispute any ruling given or deemed to have been given by the Employer or the Engineer, provided that, unless the Contractor shall, within 42 days after his receipt of a ruling or after a ruling shall have been deemed to have been given, give written notice (hereinafter referred to as a "Dispute Notice") to the Engineer, referring to this Clause, disputing the validity or correctness of the whole or a specified part of the ruling, he shall have no further right to dispute that ruling or the part thereof not disputed in the said Dispute Notice.

(b) All further references herein to a ruling shall relate to the ruling, or part thereof, specified in the Dispute Notice, as varied or added to by agreement between the Contractor and the Engineer or by the Engineer's decision in terms of sub-paragraph (c) or by the Mediator's opinion to the extent that it has become binding in terms of Sub-clause 20.3(f).

(c) The Engineer shall

i) before giving his decision on the dispute, consult the Employer thereon and give the Contractor a reasonable opportunity to present written or oral submissions thereon, which latter shall be confirmed in writing within 7 days
ii) deliver his decision in writing to the Employer and to the Contractor, and
iii) give his decision within 56 days of his receipt of the Dispute Notice, or within any further period as may be agreed between the Engineer and the Contractor, failing which, he shall be deemed to have given a decision affirming, without amendment, the ruling concerned.

(d) Unless either the Employer or the Contractor, shall, within 28 days after his receipt of notice of the decision in terms of sub-paragraph (c)(ii) or after the decision is deemed to have been given in terms of sub-paragraph (c)(iii), have given notice in writing to the Engineer, with a copy to the other Party, disputing the Engineer's decision or a specific part thereof, he shall have no further right to dispute any part of the ruling not specified in his said notice.

(e) If either Party shall have given written notice in compliance with sub-paragraph (d), the dispute shall be referred to mediation in terms of Sub-Clause 20.3 unless either Party has given written notice to the other Party of its intention to refer the matter in dispute to court, which notice shall be given either:

i) within 28 days of receipt of notice of the Engineer's decision, or

ii) within 14 days of receipt by the one Party of the other Party's notice of dispute of the Engineer's decision.

If notice of intention to refer the matter in dispute to Court has been served by either party, the matter in dispute shall not be referred to mediation but shall be referred to Court.

(f) Notwithstanding that the Contractor may, in respect of a ruling, have given a Dispute Notice, the ruling shall be of full force and carried into effect unless and until otherwise agreed by both Parties in terms of Sub-Clause 20.3(f) or as determined in a court judgement.

20.3 MEDIATION

(a) The mediation referred to in Sub-Clause 20.2(e) shall be conducted by a mediator selected by agreement between the Parties or, failing such agreement within 7 days after a written request by either Party for such agreement, nominated on the application of either Party by the President for the time being of the South African Institution of Civil Engineering.

If, for any reason, the person appointed fails to assume or to continue in the office concerned:

(i) the provisions of Sub-Clause 20.3 shall apply mutatis mutandis in the appointment of a successor, and
(ii) in making his nomination in terms of this sub-clause, the president for the time being of the South African Institution of Civil Engineering shall, at his own discretion, act in consultation

with the presidents for the time being of Consulting Engineers South Africa and the South African Federation of Civil Engineering Contractors, and

(iii) if the president required to make a nomination in terms of this sub-clause shall have a direct or indirect interest in the subject matter of the dispute, the nomination shall be made by the chief executive officer or the next senior officer of the body concerned who has no such interest.

(b) Neither Party shall be entitled to be represented at any hearing before, or at, any meeting, or in any discussion, with the mediator except by any of the following:

i) the Party himself, if a natural person,
ii) a partner in the case of a partnership,
iii) an executive director in the case of a company,
iv) a member in the case of a close corporation,
v) the Engineer,
vi) a bona fide employee of the party concerned, and
vii) a professional engineer appointed for the purpose by the Party concerned.

(c) The mediator shall, as he deems fit, follow formal or informal procedure and receive evidence or submissions orally or in writing, sworn or unsworn, at joint meetings with the Parties or separately or from any person whom he considers can assist in the formulation of his opinion, provided that:

i) each Party shall be given reasonable opportunities of presenting evidence or submissions and of responding to evidence or submissions of the other Party, and

ii) each Party shall be given full details of any evidence or submissions received by the Mediator from the other Party or any other person otherwise than at a meeting where both Parties are present or represented.

(d) The mediator shall have the power to propose to the Parties compromise settlements of or agreements in disposal of the whole or portion of the dispute.

(e) The mediator shall, as soon as reasonably practical, give to each of the Parties his written opinion on the dispute, setting out the facts and the provisions of the Contract on which the opinion is based and recording the details of any agreement reached between the Parties during the mediation.

(f) The mediator's opinion shall become binding on the Parties only to the extent correctly recorded as being agreed by the Parties in the mediator's written opinion or otherwise as recorded as being agreed in writing by both Parties subsequent to the receipt of the mediator's opinion.

(g) The dispute on any matter still unresolved after the application of the provisions of sub-paragraph (f) shall be resolved by court proceedings.

(h) Save for reference to any portion of the mediator's opinion which has become binding in terms of sub-paragraph (f), no reference shall be made by or on behalf of either Party, in any proceedings subsequent to mediation, to the mediator's opinion, or to the fact that any particular evidence was given, or to any submission, statement or admission made in the course of the mediation.

Irrespective of the nature of the mediator's opinion:

(i) each Party shall bear his own costs arising from the mediation, and

(ii) the Parties shall in equal shares pay the mediator the amount of his expenses and the amount of his fee based on a scale of fees as agreed between the mediator and the Parties before the commencement of the mediation.

20.4 REFERENCE TO COURT

If a dispute is still unresolved as provided for in sub-paragraph (g) of sub-clause 20.3 or the dispute is one described in sub-clause 20.5, the dispute shall be determined by court proceedings, provided that:

(a) nothing herein contained shall deprive the Contractor of the right to institute immediate court proceedings in respect of failure by the Employer to pay the amount of a payment certificate on its due date or to refund any amount of retention money on its due date for refund,

(b) no ruling or decision given by the Engineer in accordance with the provisions of the Contract shall disqualify him from being called as a witness and giving evidence before the court on any matter whatsoever relevant to the dispute concerned;
(c) the court shall have full power to open up, review and revise any ruling, decision, order, instruction, certificate or valuation of the Engineer relevant to the matter in dispute
(d) nothing herein precludes the Employer from approaching the Courts, as a matter of first instance, with regards to any disputes it believes it has against the Contractor and/or in defence to claims made by the latter.

20.5 SPECIAL DISPUTES

Notwithstanding anything elsewhere provided in sub-clauses 20.2, 20.3 and 20.4, any dispute between the Contractor and the Employer,

(a) not relating to a ruling, decision, order, instruction or certificate by the Engineer, or
(b) arising after the completion of the Contract or, if a Defects Notification Period is provided, after the termination of that period,

shall be determined, without the application of the provisions of sub-clauses 20.2 and 20.3 by court proceedings which may be initiated by either Party, in which event the provisions of sub-clause 20.4 shall apply.

20.6 CONTINUING VALIDITY OF SUB-CLAUSES 20.2 TO 20.6

Sub-clauses 20.2 to 20.6 inclusive constitute a separate, divisible agreement from the rest of the Contract and shall remain valid and applicable, notwithstanding that the Works may have been completed or that the rest of the Contract may be void or voidable or may have been cancelled for any reason."

APPENDIX: GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT

Delete this appendix

ANNEX: PROCEDURAL RULES

Delete this annexure

C1.2.2 APPENDIX TO TENDER: CONTRACT DATA - INFORMATION PROVIDED BY THE EMPLOYER

Notes to tenderer:

1. **This form is the equivalent of the Appendix to Tender as defined in Sub-Clause 1.1.1.9 of the FIDIC Conditions of Contract.**
2. **Clause numbers (Cl. No.) refer to the FIDIC Conditions of Contract. The prefix PC refers to an amendment to these conditions.**

Sub-Clause	Item	Data
1.1.2.2	Employer	means the South African National Roads Agency SOC Limited instituted in terms of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998) or a person delegated by the South African National Roads Agency SOC Limited to act on its behalf. The Employer's address is: The South African National Roads Agency SOC Limited 48 Tambotie Avenue Val De Grace Pretoria, 0184
1.1.2.4	Engineer	The Engineer's address to be used for this contract is: *Physical address*: TBA *Postal address: TBA*
1.3	Communications	The addresses for communication between the parties shall be: Employer: *Physical address:* *20 Shoreward Drive* *Bay West* *Gqeberha* *6025*
1.1.3.3	Time for Completion	42 months.
1.1.3.7	Defects Notification Period	6 months, except that a 12-month Defects Notification Period shall apply to all Large-area Repairs and Large-area Surface Treatments as defined in Clause C3.1.7.14, including qualifying work executed under Series M1100 and M1200.
1.1.6.5	Laws	The law governing this Contract is South African Law.
2.1	Right of Access to the Site	Shall be the Commencement Date.
PC4.2	Performance Security	2% of the accepted contract amount including VAT (Cl no. 4.11)
4.3	Contractor's representative	Where the Contracts Manager is the key person but will not be employed on the works full time, his powers will be delegated to the approved Construction Manager (Contractor's Representative).
4.1	Financial capacity	The Tenderer shall demonstrate that it has available financial resources, net of current commitments and excluding any advance payment, sufficient to meet the estimated cash flow requirements of the Contract. Where such capacity is demonstrated by means of credit facilities or readily available cash, the Contractor shall, within 30 days after

<table>
<tr><th>Sub-Clause</th><th>Item</th><th>Data</th></tr>
<tr><td></td><td></td><td>the Commencement Date and within 30 days after each anniversary thereafter, provide current evidence that financial capacity not less than the amount demonstrated remains available, or that equivalent financial capacity acceptable to the Employer is maintained. This requirement does not reduce or replace the Contractor’s obligation to finance the Works.</td></tr>
<tr><td>6.2</td><td>Rates of Wages and Conditions of Labour</td><td>The Contractor and his Subcontractors shall be registered with the Bargaining Council for the Civil Engineering Industry (Government Notice R.490 – Part III contained in Government Gazette N0. 37750) and rates for Wages and Conditions of labour agreed by the Bargaining Council for the Civil Engineering Industry shall apply to the Contractor and his Subcontractors except where a specific industry publishes its own Wage rates and Conditions of Labour.</td></tr>
<tr><td>6.5</td><td>Working Hours</td><td>Special non-working days are the designated public holidays (including all foreseeable statutory declared election days)</td></tr>
<tr><td>6.9</td><td>Contractor’s personnel</td><td>Where the key personnel are no longer available to undertake the necessary work after the award of the contract, the Contractor shall within a period of 14 working days replace the key personnel stated in the Appendix to Tender with personnel with equivalent or higher competencies and subject to approval by the Employer. Such approval shall not be unreasonably withheld.</td></tr>
<tr><td>PC8.1</td><td>Commencement of Works</td><td>As stated in the Form of Acceptance.</td></tr>
<tr><td>PC8.1</td><td>Period in which work must commence</td><td>The execution of the Works shall start on the Commencement date.</td></tr>
<tr><td>8.7</td><td>Delay Damages</td><td>As per Table C3.1.9/3 in part C3 per occurrence.</td></tr>
<tr><td>PC 8.7</td><td>Delay Damages</td><td>These amounts are non-compliance charges for the specified contractual default and are additional to, but shall not duplicate, recovery of the Employer’s actual loss under Sub-Clause 17.1 or any other remedy under the Contract:
<table>
<tr><th>Sub-Clause</th><th>Item</th><th>Data</th></tr>
<tr><td>PC8.7(b)</td><td>Failure to notify the Engineer/Employer of a third-party claim or incident within 48 hours as required under Sub-Clause 17.1</td><td>R 5 000 per claim/instance per day, capped at R 50 000 per claim/instance</td></tr>
<tr><td>PC8.7(b)</td><td>Failure to notify the insurer/broker or provide proof of notification and the insurer claim/reference number as required under Sub-Clause 17.1</td><td>R 5 000 per claim per day, capped at R 50 000 per claim</td></tr>
</table></td></tr>
</table>

Sub-Clause	Item	Data		
		PC8.7(b)	Failure to maintain the third-party liability insurance required under Clause 18 and the Contract Data, or failure to provide required evidence of cover	R 10 000 per day until satisfactory evidence of cover is provided
		PC8.7(b)	Failure to cooperate with the Engineer/Employer in reporting, investigating, defending, assessing, managing or processing a third-party claim after written request	R 5 000 per claim per day, capped at R 100 000 per claim
		PC8.7(c)	Unauthorised admission, negotiation, compromise or settlement of a third-party claim causing material prejudice to the Employer	R 25 000 per instance, plus recovery of actual loss and costs where recoverable under Sub-Clause 17.1
		PC8.7(c)(iv)	Unreasonable failure or refusal to notify the insurer or unreasonable rejection/repudiation of a third-party claim later upheld, wholly or in part, against the Employer	R 25 000 per claim, plus reimbursement under Sub-Clause 17.1 where applicable
		Note: The fixed non-compliance charges above are intended to address administrative default and do not replace the		

<table>
<tr><th>Sub-Clause</th><th>Item</th><th>Data</th></tr>
<tr><td></td><td></td><td>Contractor’s indemnity for actual loss. The Employer shall apply the charges reasonably and consistently, having regard to the nature, duration and prejudice of the default.</td></tr>
<tr><td>PC12.3</td><td>Evaluation</td><td>The term “fixed rate item” shall apply to all items of work listed in the Pricing Schedule (Including agreed items of work listed in Works Authorisations).</td></tr>
<tr><td>13.6</td><td>Daywork Allowances</td><td>Not required (Dayworks provided for in the pricing schedule).</td></tr>
<tr><td>PC13.8</td><td>Adjustments for Changes in Cost</td><td>Statistical Releases published by Statistics South Africa
Base Date: 28 days prior to Tender closure

TABLE OF ADJUSTMENT DATA
<table>
<tr><th>Coefficient</th><th>Resource</th><th>Definition</th><th>Publication</th><th>Table</th></tr>
<tr><td>x = 0,15</td><td>Fixed</td><td></td><td></td><td></td></tr>
<tr><td>a = 0,48</td><td>Labour (L)</td><td>Province of Eastern Cape</td><td>P0141</td><td>A</td></tr>
<tr><td>b = 0,37</td><td>Equipment (E)</td><td>Plant and equipment</td><td>P0151.1</td><td>4</td></tr>
<tr><td>c = 0,05</td><td>Material (M)</td><td>Civil Engineering Roads, refurbishment (excl. Bitumen)</td><td>P0151.1</td><td>6</td></tr>
<tr><td>d = 0,10</td><td>Fuel (F)</td><td>Diesel (Coal and Petroleum products)</td><td>P0142.1</td><td>1</td></tr>
</table></td></tr>
<tr><td>PC14.3 (c)</td><td>Retention Money
- Percentage

- Limit</td><td>5% of value of completed work

R 300,000.00

Retention monies shall be released upon expiry of the six (6) month Defects Notification Period. Where any portion of the Works is subject to a twelve (12) month Defects Notification Period, retention shall be released only upon expiry of the applicable twelve (12) month period and the rectification of all notified defects.</td></tr>
<tr><td>PC14.6</td><td>Minimum amount of Interim Payment Certificate</td><td>R 100,000.00</td></tr>
<tr><td>14.15</td><td>Currencies of Payment</td><td>South African Rand</td></tr>
<tr><td>18.1</td><td>Minimum insurance cover for loss of or damage to property (except the Works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in</td><td>R 20,000,000.00</td></tr>
</table>

Sub-Clause	Item	Data
	connection with the contract	
PC18.2	Contractor to insure with SASRIA	Comprehensive SASRIA is required.
C3.3.4.4	Environmental Management Plan (EMPl)	DEO means: Designated Environmental Officer
Part D	Target Area(s)	For Targeted Labour: ***Towns next to the routes*** For Targeted Enterprises: i) Suppliers of goods and services: South Africa ii) CIDB 1 to 2 contractors: Through the PLC and market analysis relevant target areas will be identified. **Towns next to the route within the local municipalities** iii) CIDB 3 and higher contractors: Through the PLC and market analysis relevant target areas will be identified. **Amathole *District Municipality and Eastern Cape*** If a sufficient number of contractors are not found in the specified target area, the target area will be expanded to allow sufficient participation to ensure a competitive tender process.
Part D	Contract Participation Goals (CPG) Targeted Enterprise Sub-targets: CIDB level 1 to 2 CIDB level 3 and higher	Any portion of the Works subcontracted under this Contract, shall be done in terms of Part D: Stakeholder and Community liaison, and Targeted labour and Targeted Enterprises utilisation and development. Minimum 30% of contract value to be sublet to Targeted Enterprises. Minimum of 10% to a maximum 15% of the Contract Value must be advertised for CIDB level 1 to 2 in the Target Area. Maximum package duration 18 months without the option to extend. Minimum of 20% of Contract Value must be advertised for CIDB level 3 and higher. Maximum package duration of up to 36 months.

C1.2.3 CONTRACT DATA – INFORMATION PROVIDED BY THE TENDERER

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Note:
This form is the equivalent of the Appendix to Tender as defined in Sub-Clause 1.1.1.9 of the FIDIC Conditions of Contract

1. FIDIC CONDITIONS OF CONTRACT

1.a Clause 1.3: Communications

The Contractor is .....

Physical Address: .....

Telephone: .....

Facsimile: .....

1.b Clause 4.3: Contractor's representative (Construction Manager)

The authorised and designated representative of the Contractor is:

Name: .....

1.c Contractor's Personnel

The Contracts Manager of the Contractor is:

Name: .....

2. OTHER CONTRACT INFORMATION

Key person	Name	Registration
A Registered person within company		
Contract Manager		
Contractor's representative (Construction Manager)		
Construction Health and Safety Officer (CHSO)		

3. INFORMATION REQUIRED FOR THE PUBLICATION OF TENDER RESULTS AS PER NATIONAL TREASURY NOTE

Name of Directors	Appointment Date	Designation

SIGNED BY TENDERER: .....

C1.3 OTHER STANDARD FORMS

C1.3.1 AGREEMENT IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 1993 (ACT NO. 85 OF 1993) AND CONSTRUCTION REGULATIONS, 2014

This AGREEMENT made at .....

on this the ..... day of ..... in the year .....

between THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED (hereinafter called "the Employer") on the one part, herein represented by .....

in his capacity as .....

and delegate of the Employer in terms of the Employer's standard powers of delegation pursuant to the provisions of Act No. 7 of 1998, and .....

(hereinafter called "the Mandatary") on the other part, herein represented by .....

.....

in his capacity as .....

WHEREAS the Employer is desirous that certain works be designed, viz
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and has accepted a tender by the Mandatary for the construction, completion & maintenance of such works and has appointed the Mandatary in terms of Regulation 5(1)(k) of the Construction Regulations 2014, and whereas the Employer and the Mandatary have agreed to certain arrangements and procedures to be followed in order to ensure compliance by the Mandatary with the provisions of the Occupational Health and Safety Act 1993 (Act 85 of 1993);

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Mandatary shall execute the work in accordance with the contract documents pertaining to this contract.

2. This Agreement shall hold good from its commencement date, to either:
   a) the date of the Performance Certificate issued in terms of sub-clause 11.9 of the Conditions of Contract for Construction for Building and Engineering Works designed by the Employer (1999) published by Federation Internationale des Ingenieurs-Conseils (FIDIC), as contained in Volume 1 of the contract documents pertaining to this contract, or
   b) the date of termination of the contract in terms of clauses 15, 16 or 19 of the General Conditions of FIDC.

3. The Mandatary declares himself to be conversant with the following:
   a) All the requirements, regulations and standards of the Occupational Health and Safety Act (Act 85 of 1993), hereinafter referred to as "The Act", together with its amendments and with special reference to the following Sections of The Act.
      i) Section 8: General duties of employers to their employees.
      ii) Section 9: General duties of employers and self-employed persons to persons other than employees.
      iii) Section 37: Acts or omissions by employees or mandataries and
      iv) Sub-section 37(2) relating to the purpose and meaning of this Agreement.
   b) The procedures and safety rules of the Employer as pertaining to the Mandatary and to all his subcontractors.

4. In addition to the requirements of sub-clause 4.8, 6.7 and 17.1 of the General Conditions of FIDIC and all relevant requirements of Volume 3 of the contract documents pertaining to this contract, the Mandatary agrees to execute all the works forming part of this contract and to operate and utilize all machinery, plant and equipment in accordance with The Act.

5. The Mandatary is responsible for the compliance with the Act by all his subcontractors, whether or not nominated and/or approved by the Employer.

6. The Mandatary warrants that all his and his subcontractors' workmen are covered in terms of the Compensation for Occupational Injuries and Diseases Act 1993, which cover shall remain in force whilst any such workmen are present on site. A letter of good standing from the Compensation Commissioner to this effect must be produced to the Employer upon signature of the agreement.

7. The Mandatary undertakes to ensure that he and/or his subcontractors and/or their respective employees will at all times comply with the following conditions:
   a) The Mandatary shall assume the responsibility in terms of Section 16.1 of The Act. The Mandatary shall not delegate any duty in terms of Section 16.2 of The Act without the prior written approval of the Employer. If the Mandatary obtains such approval and delegates any duty in terms of section 16.2 a copy of such written delegation shall immediately be forwarded to the Employer.
   b) All incidents referred to in The Act shall be reported by the Mandatary to the Department of Labour as well as to the Employer. The Employer will further be provided with copies of all written documentation relating to any incident.
   c) The Employer hereby obtains an interest in the issue of any formal enquiry conducted in terms of section 32 of The Act into any incident involving the Mandatary and/or his employees and/or its subcontractors.

In witness thereof the parties hereto have set their signatures hereon in the presence of the subscribing witnesses:

SIGNED FOR AND ON BEHALF OF EMPLOYER: .....

WITNESS 1: .....

NAME (IN CAPITALS): .....

WITNESS 2: .....

NAME (IN CAPITALS) .....

SIGNED FOR AND ON BEHALF OF THE MANDATARY .....

WITNESS 1: .....

NAME (IN CAPITALS): .....

WITNESS 2: .....

NAME (IN CAPITALS) .....

C1.3.2 FORM OF GUARANTEE

To: The South African National Roads Agency SOC Limited
PO Box 415
Pretoria
0001

Note to tenderer:
This pro forma is for information only. The successful tenderer's guarantor will need to reproduce it without amendment, omission or addition for completion and lodgement with the Employer. A separate copy of this pro forma will be issued to the successful tenderer with the letter of acceptance.

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1. I/We , the undersigned, ... and .....

   in our respective capacities as .....

   and .....

   and as such duly authorised to represent: .....
   (hereinafter referred to as "the Guarantor")
   do hereby hold at your disposal the amount of .....

   (R…….) , for the due fulfilment by .....
   (hereinafter referred to as "the Contractor") of its obligations to The South African National Roads Agency SOC Limited (hereinafter referred to as "SANRAL") in terms of the above stated contract between the Contractor and SANRAL.

2. The Guarantor hereby renounces the benefits of the exceptions non numeratae pecuniae, non causa debiti, excussionis and divisionis, the meanings and effect whereof the Guarantor declares itself to be fully conversant.

3. The Guarantor undertakes and agrees to pay to SANRAL the said amount of R .....
   .....

   (R…….) , or such portion as may be demanded on receipt of a written demand from SANRAL, which demand may be made by SANRAL if, (in your opinion and at your sole discretion), the said Contractor fails and/or neglects to commence the work as prescribed in the contract or if he fails and/or neglects to proceed therewith or if, for any reason, he fails and/or neglects to complete the services in accordance with the conditions of contract, or if he fails or neglects to refund to SANRAL any amount found to be due and payable to SANRAL, or if his estate is sequestrated or if he surrenders his estate in terms of the Insolvency Law in force within the Republic of South Africa.

4. Subject to the above and without in anyway detracting from your rights to adopt any of the procedures set out in the contract, the said demand can be made by you at any stage.

5. The said amount of R .....

   (R…….), or such portion as may be demanded may be retained by SANRAL on condition that after completion of the service, as stipulated in the contract, SANRAL shall account to the Guarantor showing how this amount has been utilised and refund to the Guarantor any balance due.

6. This guarantee is neither negotiable nor transferable and
   a) must be surrendered to the Guarantor at the time when SANRAL accounts to the Guarantor in terms of clause 5 above, or
   b) shall lapse upon the issue of the Taking-Over Certificate in terms of sub-clause 10.1 of the Conditions of Contract and

Proforma

c) shall not be interpreted as extending the Guarantor's liability to anything more than payment of the amount guaranteed.

7. This guarantee shall be governed by South African Law and subject to the jurisdiction of South African Courts.

THUS DONE AND SIGNED AT .....

ON THIS ..... DAY OF ..... 20.....

GUARANTOR: .....

ADDRESS: .....

.....

AS WITNESSES: 1 ..... 2 .....

NAMES (PRINT) 1 ..... 2 .....

Proforma

C1.3.3(a) FORM OF NOTIFICATION OF CONSTRUCTION WORK

Annexure 2

OCCUPATIONAL HEALTH & SAFETY ACT, 1993

Regulation 4 of the Construction Regulations, 2014

NOTIFICATION OF CONSTRUCTION WORK

1. (a) Name and postal address of Principal Contractor:

_____

_____

(b) Name and Telephone Number of Principal Contractor's contact person:

_____

_____

2. Principal Contractor's Compensation registration number:

_____

_____

3. (a) Name and postal address of client:

_____

_____

(b) Name and telephone number of client's contact person or agent:

_____

_____

4. (a) Name and postal address of designer(s) for the project:

_____

_____

(b) Name and telephone number of designer's contact person:

_____

_____

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 8(1):

_____

_____

6. Name/s of principal contractor's sub-ordinate supervisors on site appointed in terms of regulation 8(2):

_____

_____

7. Exact physical address of the construction site or site office:

_____

_____

8. Nature of the construction work:

_____

_____

_____

_____

9. Expected commencement date:

_____

_____

10. Expected completion date:

_____

_____

11. Estimated maximum number of persons on the construction site:

Total: _____ Male: _____ Female: _____

12. Planned number of contractors on the construction site accountable to principal contractor:

_____

_____

13. Name(s) of contractors already chosen:

_____

_____

_____

_____

_____ _____

Principal Contractor Date

_____ _____

Client's Agent (where applicable) Date

_____ _____

Client Date

* THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUT **PRIOR TO COMMENCEMENT** OF WORK ON SITE.

C1.3.4 FORM OF BANKING DETAILS

Notes to Contractor:

1. **The Employer applies an Electronic Funds Transfer system for all payments.**
2. **If you are already registered as a vendor with the Employer, you are not required to submit the documentation as per note 3 (i) and 3(ii).**
3. **If you are not registered as a vendor with the Employer, you are required to supply:**
   - **(i) a completed SANRAL Vendor Application Form (to be obtained from the relevant Regional Project Manager);**
   - **(ii) a confirmation of bank account (Bank letterhead) letter indicating the company name and account number; or**
   - **(iii) if you are unable to supply a confirmation of bank account, you are to provide a letter on your letterhead as per the pro forma below and return the original letter to the address as stated in clause 1.3 of C1.2.2 - Information provided by the Employer, delivered by hand or sent electronically.**

To:
The South African National Roads Agency SOC Limited
20 Shoreward Road
Bay West
Ggeberha
6025

Dear Sir

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BANKING DETAILS

By signing this document we accept the following:

- The banking details submitted are those of ***Note to compiler: insert name of successful contractor*** and we take full responsibility for their correctness.
- We indemnify the Employer from any and all outcomes if an electronic transfer is made into an incorrect bank account using the banking details submitted.

Account Name: ..... ……

Bank:..... ……

Branch Name:..... ……

Branch Code:..... ……

Account Number:..... ……

Yours sincerely

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.....
Authorised Signatory for ***Note to compiler: Insert name of successful contractor***

DATE: …….

C1.3.5 APPOINTMENT OF PRINCIPAL CONTRACTOR IN TERMS OF SECTION 5(1)(k) OF THE CONSTRUCTION REGULATIONS, 2014 INCORPORATED IN THE OCCUPATIONAL HEALTH AND SAFETY ACT, ACT 85 OF 1993

APPOINTMENT OF PRINCIPAL CONTRACTOR BY CLIENT (EMPLOYER)

This AGREEMENT made at .....

on this the ..... day of ..... in the year .....

between THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED (hereinafter called "the Client") on the one part, herein represented by .....

in his/her capacity as .....

and delegate of the Client in terms of the Client's standard powers of delegation pursuant to the provisions of Act No. 7 of 1998, and .....

(hereinafter called "the Principal Contractor") on the other part, herein represented by .....

.....

in his capacity as .....

WHEREAS the Client is desirous that certain works be constructed, viz.

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and has accepted a tender by the Principal Contractor for the construction, completion & maintenance of the works.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Principal Contractor shall execute the work in accordance with the contract documents pertaining to this contract.

2. This Agreement shall hold good from its commencement date, to either :
   (i) the date of the Performance Certificate issued in terms of sub-clause 11.9 of the Conditions of Contract for Construction for Building and Engineering Works designed by the Employer (1999) published by Federation Internationale des Ingenieurs-Conseils (FIDIC), as contained in Volume 1 of the contract documents pertaining to this contract, or
   (ii) the date of termination of the contract in terms of clauses 15, 16 or 19 of the FIDIC.

3. The Principal Contractor declares himself to be conversant with all the requirements and standards of the Occupational Health and Safety Act (Act 85 of 1993) together with its amendments and incorporated Regulations, hereinafter referred to as "The Act", and with special reference to the Construction Regulation Section 7: Duties of Principal Contractor and Contractor.

4. The Principal Contractor is responsible for the compliance with the Act by all his subcontractors and suppliers when entering the construction site, whether or not nominated and/or approved by the Client.

5. The Principal Contractor warrants that all his and his subcontractors' workmen are covered in terms of the Compensation for Occupational Injuries and Diseases Act 1993, which cover shall remain in force whilst any such workmen are present on site. A letter of good standing from the Compensation Commissioner to this effect must be produced to the Employer upon signature of the agreement.

6. The Principal Contractor warrant that adequate provision has been made for the cost of health and safety measures during the execution of the project, and that sufficient resources (including competent personnel) are available to carry out the construction work safely.

7. The Principal Contractor warrants that that the Employer / Client has carried out his duties in terms of Construction Regulation 5(1)(a), (b) and (f):

(i) Section 5(1)(a): A baseline risk assessment for the intended construction work was prepared by the client and included in the tender documentation.

(ii) Section 5(1)(b) and (f): A suitable, sufficiently documented and coherent site specific health and safety specification for the intended construction work based on the baseline risk assessment was included in the tender documentation.

In witness thereof the parties hereto have set their signatures hereon in the presence of the subscribing witnesses:

SIGNED FOR AND ON BEHALF OF EMPLOYER: .....

WITNESS 1: .....

NAME (IN CAPITALS) .....

WITNESS 2: .....

NAME (IN CAPITALS) .....

SIGNED FOR AND ON BEHALF OF THE PRINCIPAL CONTRACTOR .....

WITNESS 1: .....

NAME (IN CAPITALS): .....

WITNESS 2: .....

NAME (IN CAPITALS) .....