



## C1.2 CONTRACT DATA

### GENERAL CONDITION OF CONTRACT FOR CONSTRUCTION WORKS, THIRD EDITION (2015) PRO FORMA CONTRACT DATA

PROJECT NO: 154170

REFURBISHMENT OF A1, B1, C1 AND D1 ELECTRICAL SUB-STATIONS AND REFURBISHMENT OF HIGH  
MAST LIGHTS IN VICTOR KHANYE LOCAL MUNICIPALITY

#### PART 1: DATA PROVIDED BY THE EMPLOYER

##### CONDITIONS OF CONTRACT

The General Conditions of Contract for Construction Works, Third Edition (2015) published by the South African Institute of Civil Engineering, Private Bag X200, Halfway House, 1685 is applicable to this Contract and is obtainable from [www.saice.org.za](http://www.saice.org.za).

##### CONTRACT SPECIFICATION DATA

The following contract specification data, referring to the General Conditions of Contract for Construction Works, Third Edition (2015) are applicable to this contract:

Clause	Data
1.1.1.5	The "commencement date" means the date that the Agreement, made in terms of the Form of Offer and Acceptance, comes into effect.
1.1.1.13	The Defects Liability Period for the Works shall be 365 days.
1.1.1.14	The time for achieving Practical Completion is <b>6 Months</b>
1.1.1.15	The Name of the Employer is <b>Nkangala District Municipality</b>  The NDM General Manager Technical Services is <b>Mr. D.J.D Mahlangu</b>
1.1.1.16	The Employer's Agent is <b>F and A Consulting</b> represented by <b>Mr B Makhanya</b>
1.1.1.26	The pricing strategy is Re-measurement Contract.
1.2.1	Add the following to the clause: 1.2.1.3 Sent by facsimile, electronic or any like communication irrespective of it being during office hours or otherwise. 1.2.1.4 Posted to the Contractor's address, and delivered by the postal authorities. 1.2.1.5 Delivered by a courier service, and signed for by the recipient or his representative.
1.2.1.2	The employer's address for receipt of communication is:  <b>2A Walter Sisulu Street MIDDELBURG 1050 P O Box 437</b>



	<p><b>Middelburg</b> <b>1050</b></p> <p><b>Telephone: 013 249 2000</b> <b>Facsimile: 013 249 2145</b></p> <p>The address and telephone number of the Employer's Agent is:</p> <p><b>F and A Consulting</b> <b>Suite 520</b> <b>Private Bag X37</b> <b>Lynnwoodridge, Pretoria</b> <b>0040</b></p> <p><b>Telephone: 064 256 4074</b> <b>Facsimile: 086 416 0938</b></p>
<p>1.3.5</p>	<p>Add the following new Clause:</p> <p>The copyright in all documents, drawings and records (prepared by the Employer's Agent) related in any manner to the Works shall vest in the Employer or the Employer's Agent or both (according to the dictates of the Contract that has been entered into by the Employer's Agent and the Employer for the Works), and the Contractor shall not furnish any information in connection with the Works to any person or organisation without the prior approval of the Employer to this effect.</p>
<p>3.2.3</p>	<p>Add the following to the clause:</p> <p>The Employer's Agent is, in terms of his appointment by the Employer for the design and administration of the Works included in the Contract, required to obtain the specific approval of the Employer for the execution of the following duties:</p> <p>3.2.3.1 The issuing of an order to suspend the progress of the Works, the extra cost resulting from which order is to be borne by the Employer in terms of Clause 5.11 or the effect of which is liable to give rise to a claim by the Contractor for an extension of time under Clause 5.12 of these conditions.</p> <p>3.2.3.2 The issuing of an instruction or order to vary the nature or quantity of the Works in terms of Clause 6.3, the estimated effect of which will be to increase the Contract Price by an amount exceeding R50 000, the evaluation of all variation orders in terms of Clause 6.4 and the adjustment of the sum(s) tendered for General Items in terms of Clause 6.11.</p> <p>3.1.3.3 The approval of any claim submitted by the Contractor in terms of Clause 10.1.</p>
<p>4.1.2</p> <p>4.1.2.1</p> <p>4.1.2.2</p> <p>4.1.2.3</p> <p>4.1.2.4</p>	<p>Add the following to the clause:</p> <p>The Contractor shall provide the following to the Employer's Agent for retention by the Employer or his assignee in respect of all works designed by the Contractor: a Certificate of Stability of the Works signed by a registered Professional Engineer confirming that all such works have been designed in accordance with the appropriate codes of practice.</p> <p>Proof of registration and of adequate and current professional indemnity insurance cover held by the designer(s).</p> <p>Design calculations should the Employer's Agent request a copy thereof.</p>



4.1.2.5	<p>Engineering drawings and workshop details (both signed by the relevant professional engineer), in order to allow the Employer's Agent to compare the design with the specified requirements and to record any comments he may have with respect thereto.</p> <p>"As-Built" drawings in DXF electronic format after completion of the Works.</p> <p>The Contractor shall be responsible for the design of the Temporary Works.</p>
4.3.3	<p>Add the following new clause:</p> <p>The Contractor shall comply with the Occupational Health and Safety Specification prepared by the Employer in terms of the Construction Regulations, 2003 promulgated in terms of Section 43 of the Occupational Health and Safety Act (Act No. 85 of 1993).</p> <p>Without limiting the Contractor's obligations in terms of the Contract, the Contractor shall before commencement of the Works or any part thereof, be in the possession of an approved Health and Safety Plan.</p> <p>The Contractor shall submit an approved Health and Safety Plan to the Employer's Agent within 14 days from the date that the Agreement made in terms of the Form of Offer and Acceptance comes into effect.</p>
4.3.4	<p>Add the following new clause:</p> <p><b>Contractor's liability as mandatory</b></p> <p>Notwithstanding any actions which the Employer may take, the Contractor accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements and procedures imposed by the Occupational Health and Safety Act, 1993 (Act 85 of 1993), and all its regulations, including the Construction Regulations, 2003, for which he is liable as mandatory. By entering into this Contract it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act.</p>
4.3.5	<p>Add the following new clause:</p> <p><b>Contractor to notify Employer</b></p> <p>The Employer retains an interest in all inquiries conducted under this Contract in terms of Section 31 and/or 32 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and its Regulations following any incident involving the Contractor and/or Sub-Contractor and/or their employees. The Contractor shall notify the Employer in writing of all investigations, complaints or criminal charges which may arise pursuant to work performed under this Contract in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and Regulations.</p>
4.3.6	<p>Add the following new clause:</p> <p><b>Contractor's Designer</b></p> <p>The Contractor and his designer shall accept full responsibility and liability to comply with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and the Construction Regulations, 2003 for the design of the Temporary Works and those part of the Permanent Works which the Contractor is responsible to design in terms of the Contract.</p>
4.3.7	<p>Add the following new clause:</p> <p>The Ministerial Determination 4, Expanded Public Works Programmes, issued in terms of the Basic Conditions of Employment Act of 1997 by the Minister of Labour in Government Notice No 949 of 22 October 2010, as appended to these Contract Data as Annexure, shall apply to works described in the Scope of Work as being labour intensive and which are undertaken by unskilled or semi-skilled workers.</p>
4.10.3	<p>Add the following new clause:</p> <p>The Contractor shall use local labour in accordance with the requirements contained within the Scope of Work.</p>
5.3.1	<p>Add the following:</p>



	<p>The documentation required before commencement with Works Execution are:</p> <ul style="list-style-type: none"> <li>• Health and Safety Plan (Refer to Clause 4.3)</li> <li>• Initial Programme (Refer to Clause 5.6)</li> <li>• A detailed cashflow forecast (Refer to Clause 5.6.2.6)</li> <li>• Security (Refer to Clause 6.2)</li> <li>• Insurance (Refer to Clause 8.6)</li> </ul>
5.3.2	<p>Add the following:</p> <p>The time to submit the documentation required (Refer to Clause 5.3.1) before commencement with Works execution is 14 days.</p>
5.4.2	<p>The access and possession of Site shall not be exclusive to the Contractor but as set out in the Scope or Works and/or Site information.</p>
5.6.1	<p>Add the following to the clause:</p> <p>In this regard the Contractor shall have regard for the phases and sub-phases (if applicable) for the Development, which shall also be the order in which the Permanent Works shall be constructed, unless otherwise agreed between the parties and committed to writing. If phased construction is applicable, the phases and sub-phases will be described in the Specifications and/or will be indicated on the Phasing Plan which forms part of the Drawings.</p>
5.7.1	<p>Delete the last paragraph of the clause and replace with the following:</p> <p>No such instruction by the Employer's Agent to expedite progress shall be the subject of additional compensation to the Contractor unless the instruction explicitly states that the Contractor is entitled to additional compensation and cites the amount of such compensation or the basis upon which it is to be determined.</p>
5.8.1	<p>The non-working days are Sundays.</p> <p>Special non-working days shall be all South African Statutory holidays and the official building holidays (which commences on <b>15 December</b> and ends on <b>08 January</b>).</p>
5.12.3	<p>Delete the contents of the clause and insert the following:</p> <p>If an extension of time is granted, other than an extension resulting from abnormal rainfall in terms of Clause 5.12.5, the Contractor shall be paid such additional time-related General Items as are appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned.</p>
5.12.5	<p>Add the following new clause:</p> <p><b>Extension of time due to Abnormal Rainfall</b></p> <p>Extension of time for completion of the Contract shall be allowed in the event of abnormal rainfall in accordance with the following formula:</p> $V = (N_w - N_n) + (R_w - R_n)/20$ <p>Where:</p> <p><b>(i) V = Extension of time in calendar days for the calendar month under consideration</b></p> <p>N<sub>w</sub> = Actual number of days during the calendar month under consideration on which a rainfall of 10mm and more is recorded</p> <p>R<sub>w</sub> = Actual total rainfall in mm recorded during the calendar month under consideration</p> <p>N<sub>n</sub> = Average number of days, derived from rainfall records, on which a rainfall of 10mm and more was recorded during the relevant calendar month as per the data tabulated hereinafter</p> <p>R<sub>n</sub> = Average total rainfall in mm for the relevant calendar month,</p>



	<p style="text-align: center;">derived from rainfall records, as tabulated hereinafter</p> <p>Where the extension of time due to abnormal rainfall has to be calculated for portion of a calendar month, pro rata values shall be used. Should V be negative for any particular month, and should its absolute value exceed the corresponding value of <math>N_n</math>, then V shall be taken as being equal to minus <math>N_n</math>. The total extension of time to be granted shall be the algebraic sum of all the monthly extensions, provided that if this total is negative then the time for completion shall not be reduced due to subnormal rainfall.</p> <p>Rainfall records for the period of construction shall be taken on Site. The Contractor shall provide and install all the necessary equipment for accurately measuring the rainfall. The Contractor shall also provide, erect and maintain a security fence plus gate, padlock and keys at each measuring station, all at his own cost. The Employer's Agent or his Representative shall take and record the daily rainfall readings. The Contractor shall be permitted to attend these readings, in the company of the Employer's Agent Representative. Access to the measuring gauge(s) shall at all times be under the Employer's Agent's control.</p>
<p>5.13.</p>	<p>Delete the contents of the clause and insert the following:</p> <p>5.13.1 If the Contractor fails by the Due Completion Date to complete the Works, or any specific portion thereof that is identified in the Scope of Works to the extent which entitles him in terms of Clause 5.14.2 to receive a Certificate of Practical Completion for the Works, then the Contractor shall be liable to the Employer for the sum(s) stated below as (a) penalty(ies) for every day which shall elapse between the Due Completion Date for the Works or the specific portion of the Works and the actual Date of Practical Completion of the Works or of the specific portion.</p> <p style="padding-left: 40px;">The penalty for delay shall be: <b>R2000-00</b> per day.</p> <p>5.13.2 If before the issue of a Certificate of Practical Completion for the whole of the Works, or for any specific portion thereof that is identified in the Scope of Works, any further part of the Works has been:</p> <p>5.13.2.1 certified as complete in terms of a Certificate of Practical Completion; or</p> <p>5.13.2.2 occupied or used by the Employer, his agents, employees or other contractors (not being employed by the Contractor);</p> <p style="padding-left: 40px;">Then the appropriate penalty for delay referred to in Clause 5.13.1 above shall be reduced by the amount which is determined by the Employer's Agent to be appropriate under the circumstances.</p> <p>5.13.3 The imposition of penalties in terms of Clause 5.13.1 shall not relieve the Contractor from his obligation to complete the Works, nor from any of his obligations and liabilities under the Contract.</p> <p>5.13.4 All penalties for which the Contractor becomes liable in terms of Clause 5.13.1 shall be accumulative. The Employer may, without prejudice to any other method of recovery, deduct the amounts of all such penalties from any monies in his possession that are or may become due to the Contractor.</p> <p>5.13.5 The imposition of any penalties in terms of Clause 5.13.1 shall not limit the right of the Employer's Agent to act in terms of Clause 9.2.</p>
<p>5.13.4</p>	<p>Add the following new Clause:</p> <p>If the Contractor shall, without the prior written permission of the Employer's Agent, in respect of any portions of the Works which are prescribed in the Scope of Work to be executed using labour intensive construction methods, or for which the maximum size and capacity of mechanical plant and equipment is restricted in terms of the Contract:</p> <ul style="list-style-type: none"> <li>• fail to execute such portions of the Works, or any parts thereof, utilizing labour intensive construction methods strictly in accordance with the provisions of the Contract; or</li> <li>• utilize in the execution of such portions of the Works, or any parts thereof, mechanical plant or equipment which is in conflict with the terms of the Contract; or</li> </ul>



	<ul style="list-style-type: none"> <li>utilize in the execution of such portions of the Work, workers drawn from sources other than those allowed in terms of the Contract;</li> </ul> <p>then the Contractor shall be liable to the Employer for the percentage stated below of the value of the Works so executed in conflict with the provisions of the relevant Scope of Work, as a penalty for non-compliance.</p> <p>The penalty for non-compliance is: 15% of the value of Works specified.</p> <p>The imposition of penalties in terms of this clause shall not relieve the Contractor from his obligation to complete the Works, nor from any of his obligations and liabilities under the Contract.</p>
6.1.1	<p>Add the following to the clause:</p> <p>Payment for works identified in the Scope of Work as being labor-intensive shall only be made in accordance with the provisions of the Contract if the works are constructed strictly in accordance with the provisions of the Scope of Work. Any non-payment for such works shall not relieve the Contractor in any way from his obligations either in contract or in delict.</p>
6.2.1	<p>Add the following to this Clause:</p> <p>The amount of the guarantee will be 10% of the Contract Price (including Value Added Tax) at the time that the Agreement comes into effect. The guarantee shall remain valid until the issue of the Certificate or Certificates of Completion in respect of the whole of the Permanent Works. The Pro Forma Form of Guarantee bound into the General Conditions of Contract is replaced by the Form of Guarantee (Deed of Suretyship) which is included in Part C1.3 of this document.</p> <p>This approval or otherwise shall be based upon legal opinion to be provided by the Employer's Agent.</p>
6.8.2	<p>The application of a Contract Price Adjustment factor will not apply to this Contract. "Refer to Contract Price Adjustment Schedule for details".</p>
6.8.3	<p>Price Adjustments for variations in the cost of special materials will be allowed. "The Contractor will be required to provide full details in Part 2 of the Contract Data".</p>
6.8.4	<p>In line 8 delete the words "between the Employer and the Contractor".</p>
6.10.1.5	<p>The percentage advance on materials not yet built into the Permanent Works is 80%.</p>
6.10.3	<p>The percentage retention is 10%. The Limit of Retention Money is 10% of the Contract Price at the time of the Agreement made in terms of the Form of Offer and Acceptance coming into effect.</p>
6.10.4	<p>In line 4 delete the word "said" and insert the word "correct".</p>
6.10.9	<p>Replace the first sentence of the clause with the following:</p> <p>Within 14 days after the date of final approval as stated in the Final Approval Certificate, the Contractor shall deliver to the Employer's Agent a final statement claiming final statement of all moneys due to him for additional work ordered by the Employer's Agent after the Certificate of Completion date (save in respect of matters in dispute, in terms of Clause 10.3, and not yet resolved) plus the remainder of retention monies (subject to Clause 6.10.3) retained by the Employer.</p>
6.11.1.3	<p>Delete "15 %" and replace it with "25%".</p>
10.5.3	<p>The number of Adjudication Board Members to be appointed is 1 (One).</p>



CONTRACT PRICE ADJUSTMENT SCHEDULE	
Clause	Contract Data
1.1	The application of a Contract Price Adjustment factor will not apply to this Contract.

**Part 2: Data Provided by the Contractor**

Clause	Contract Data												
1.1.1.9	The name of the Contractor is: <hr/> <hr/>												
1.2.1.2	The address of the Contractor is: <hr/> <hr/>												
6.2.1	The security to be provided by the Contractor shall be one of the following: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #cccccc;"> <th style="width: 80%;">Type of Security</th> <th>Contractor's choice. Indicate "Yes" or "No"</th> </tr> </thead> <tbody> <tr> <td>Cash deposit of 10% of the Contract Sum (Incl. VAT).</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Performance guarantee of 10 % of the Contract Sum (Incl. VAT).</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Retention of 10% of the value of the Works (Incl. VAT).</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Cash deposit of 5% of the Contract Sum (Incl. VAT) plus retention of 5% of the value of the Works (Incl. VAT).</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Performance guarantee of 5% of the Contract Sum (Incl. VAT) plus retention of 5% of the value of the Works (Incl. VAT).</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>	Type of Security	Contractor's choice. Indicate "Yes" or "No"	Cash deposit of 10% of the Contract Sum (Incl. VAT).	<input type="checkbox"/>	Performance guarantee of 10 % of the Contract Sum (Incl. VAT).	<input type="checkbox"/>	Retention of 10% of the value of the Works (Incl. VAT).	<input type="checkbox"/>	Cash deposit of 5% of the Contract Sum (Incl. VAT) plus retention of 5% of the value of the Works (Incl. VAT).	<input type="checkbox"/>	Performance guarantee of 5% of the Contract Sum (Incl. VAT) plus retention of 5% of the value of the Works (Incl. VAT).	<input type="checkbox"/>
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**C1.3 PERFORMANCE GUARANTEE**

**(Not to be completed at tender stage)**

**PRO FORMA**

**PERFORMANCE GUARANTEE**

For use with the General Conditions of Contract for Construction Works, Third Edition (2015).

**GUARANTOR DETAILS AND DEFINITIONS**

“Guarantor” means: \_\_\_\_\_

Physical address: \_\_\_\_\_

“Employer” means: \_\_\_\_\_

“Contractor” means: \_\_\_\_\_

“Employer’s Agent” means: \_\_\_\_\_

“Works” means: \_\_\_\_\_

“Site” means: \_\_\_\_\_

“Contract” means: The Agreement made in terms of the Form of Offer and Acceptance and such amendments or additions to the Contract as may be agreed in writing between the parties.

“Contract Sum” means: The accepted amount inclusive of tax of R \_\_\_\_\_

Amount in words: \_\_\_\_\_

“Guaranteed Sum” means: The maximum aggregate amount of R \_\_\_\_\_

Amount in words: \_\_\_\_\_

Type of Performance Guarantee: \_\_\_\_\_ (insert variable or fixed)

“Expiry Date” means: .....(Give date) or any other later date set by the Contractor and/or Employer provided such instruction is received prior to the Expiry Date as indicated here.

**CONTRACT DETAILS**

Employer’s Agent issues: Interim Payment Certificates, Final Payment Certificate and the Certificate Completion of the Works as defined in the Contract.

**1. VARIABLE PERFORMANCE GUARANTEE**

1.1. Where a Variable Performance Guarantee has been selected, the Guarantor’s liability shall be limited during the following periods to diminishing amounts of the Guaranteed sum as follows:

1.1.1 From and including the date of signing the Performance Guarantee up to and including the date of the interim payment certificate certifying, for the first time, more than 50% of the Contract Sum:

R.....



(Amount in words .....)

- 1.1.2 From the day following the date of the said interim payment certificate up to and including the Expiry Date, or the date of issue by the Employer's Agent of the Certificate of Completion of the Works, whichever occurs first:

R.....

(Amount in words .....)

- 1.2. The Employer's agent and/or the Employer shall advise the Guarantor in writing of the date on which the interim payment certificate certifying, for the first time, more than 50% of the Contract Sum, has been issued and the date on which the Certificate of Completion of the Works has been issued.

## **2. FIXED PERFORMANCE GUARANTEE**

- 2.1. Where a Fixed Performance Guarantee has been selected, the Guarantor's liability shall be limited to the amounts of the guaranteed sum.
- 2.2. The Guarantor's period of liability shall be from and including the date on which the Performance Guarantee is signed, up to and including the Expiry Date, or the date of issue by the Employer's Agent of the Certificate of Completion of the works, or the date of payment in full of the Guaranteed Sum, whichever occurs first.
- 2.3. The Employer's Agent and/or the Employer shall advise the Guarantor in writing of the date on which the Certificate of Completion of the Works has been issued.

## **3. CONDITIONS APPLICABLE TO VARIABLE AND FIXED PERFORMANCE GUARANTEES**

- 3.1. The Guarantee hereby acknowledge that:
- 3.1.1 Any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship.
- 3.1.2 Its obligation under this Performance Guarantee is restricted to the payment of money.
- 3.2. Subject to the Guarantor's maximum liability referred to in 1.1 or 2.1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 3.2.1 to 3.2.3:
- 3.2.1 A copy of a first written demand issued by the Employer to the Contractor stating that payments of a sum certified by the Employer's Agent in an Interim or Final Payment Certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 3.2.2:
- 3.2.2 A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address with a copy to the Contractor stating that a period of seven (7) days has elapsed since the first written demand in terms of 3.2.1 and the sum certified has still not been paid;
- 3.2.3 A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 3.2.
- 3.3. Subject to the Guarantor's maximum liability referred to in 1.1 or 2.1, the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand form the



Employer to the Guarantor at the Guarantor's physical address calling up this Performance Guarantee, such demand stating that:

- 3.3.1 The Contractor has been terminated due to the Contractor's default and that this Performance Guarantee is called up in terms of 3.3; or
  - 3.3.2 A provision or final sequestration or liquidation court order has been granted against the Contractor and that the Performance Guarantee is called up in terms of 3.3; and
  - 3.3.3 The aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
- 3.4. It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 3.2 and 3.3 shall not exceed the Guarantor's maximum liability in terms of 1.1 or 2.1
  - 3.5. Where the Guarantor has made payment in terms of 3.3, the Employer shall upon the date of issue of the Final Payment Certificate submit an expense account to the Guarantor showing how all monies received in terms of this Performance Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Performance Guarantee shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Employer until the date of refund.
  - 3.6. Payment by the Guarantor in terms of 3.2 or 3.3 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
  - 3.7. Payment by the Guarantor in terms of 3.3 will only be made against the return of the original Performance Guarantee by the Employer.
  - 3.8. The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer may consider fit and the Guarantor shall not have the right to claim his release from this Performance Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.
  - 3.9. The Guarantor chooses the physical address as stated above for the service of all notices for all purpose in connection herewith.
  - 3.10. The Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 1.1.2 or 2.2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
  - 3.11. This Performance Guarantee, with the required demand notices in terms of 3.2 or 3.3, shall be regarded as a liquid document for the purpose of obtaining a court order.
  - 3.12. Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrates' Court Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate Court,

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

Date: \_\_\_\_\_



Guarantor's signatory (1) \_\_\_\_\_

Capacity \_\_\_\_\_

Guarantor's signatory (2) \_\_\_\_\_

Capacity \_\_\_\_\_

Witness signatory (1) \_\_\_\_\_

Witness signatory (2) \_\_\_\_\_



**RETENTION MONEY GUARANTEE  
(Not to be completed at tender stage)**

In accordance with clause 6.2.1 of General Conditions of Contract, 3rd Edition 2015

Contract No: -----

Description of Contract: -----  
-----

**GUARANTOR DETAILS AND DEFINITIONS**

“Guarantor” means: ----- (Please put name of firm)

Physical address: -----  
-----

Postal address: -----  
-----

Tel: -----

Fax: -----

“Employer” means: **NKANGALA DISTRICT MUNICIPALITY**

“Contractor” means: ----- (Please put name of firm)

“Guarantee sum” means: 10% of the contract amount

“Employer’s Agent” means: **F AND A CONSULTING**

“Works” means: Permanent works together with temporary works

“Site” means: The land and other places, made available by the Employer for the purpose of the contract, on under over in or through which the works are to be executed or carried out.

“Contractor” means: The Agreement made in terms of the Form of Offer and Acceptance and such amendments or additions to the Contractor as may be agreed in writing between the parties.

“Contract Sum” means: The accepted amount inclusive for tax of R-----

Amount in words: -----

“Expiry Date” This Guarantee shall expire upon the issue of the **Final Completion Certificate** issued by NKANGALA DISTRICT MUNICIPALITY signed by the Director of EMPLOYER’S AGENTING Services, as such date is advised to the Guarantor in writing confirmed by the Employer.

**CONTRACT DETAILS**

Employer’s Agent issues: Interim Payment Certificates, Final Payment Certificate and the Certificate Completion of the Work as defined in the Contract.

**RETENTION GUARANTEE**

1. The Guarantor’s liability shall be limited to the amount of the Guaranteed Sum.
2. Expiry Date” This Guarantee shall expire upon the issue of the final completion certificate issued by NKANGALA DISTRICT MUNICIPALITY signed by the Director of EMPLOYER’S AGENTING Services, as such date is advised to the Guarantor in writing confirmed by the Employer  
The Employer’s Agent and/or the Employer shall advise the Guarantor in writing of the date on the Certificate of the works has been issued.



3. The Guarantor hereby acknowledges that:
  - 3.1. Any reference in this performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a surety ship;
  - 3.2. Its obligation under this Retention Guarantee is restricted to the payment of money.
4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:
  - 4.1. A copy of a first written demand issues by the Employer to the Contractor stating that payment of a sum certified by the Employer's Agent and/ or Employer in an Interim or Final Payment Certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 4.2;
  - 4.2. A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address and / or postal address with a copy to the Contractor stating that period of seven (7) days has elapsed since the first written demand terms of 4.1 and the sum certificate has still not been paid;
  - 4.3. A copy of the aforesaid payment certificate which entails the Employer to receive payment in terms of the Contract sum in 4.
5. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the Employer the Guaranteed sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor's physical address and/ or postal address calling up this Performance Guarantee, such demand stating that:
  - 5.1. The contractor has been terminated due to the Contractor's default and this Retention Guarantee is called up in terms of 5; or
  - 5.2. A provisional or final sequestration or liquidation court order has been granted against the Contractor and that the Retention Guarantee is called up in terms of 5; and
  - 5.3. The aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional /final sequestration and/or the provisional liquidation court order.
6. It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.
7. Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the guarantor.
8. Payment by Guarantor in terms of 5 will only be made against the return of the original Retention Guarantee by the Employer.
9. The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer may deem fit and the Guarantor shall not have the right to claim his release from his Retention Guarantee on account alleged to be prejudicial to the Guarantor.
10. The Guarantor chooses the physical address and postal address as stated above for the service of all notices for all purposes in connection herewith.
11. This Retention Guarantee is neither negotiable nor transferable and shall expire in terms of 2, where after on claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
12. This Retention Guarantee, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.



13. Where this Retention Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Court Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

Sign at -----

Date -----

Guarantor's signatory (1) -----

Capacity -----

Guarantor's signatory (2) -----

Capacity -----

Witness signatory (1) -----

Witness signatory (2) -----