



CONTRACT N.003-041-2025/1 PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

BASE DATE
JULY 2025

TENDER DOCUMENT

BOOK 2 & 3

**Chief Executive Officer
SANRAL Head Office
48 Tambotie Avenue
VAL DE GRACE
0184**

**The Chief Executive Officer
N3TC Head Office
1st Floor Block D
Southdowns Office Park
22 Karee Street
IRENE
0157**

NAME OF TENDERER:

Set sequential number

N3 TOLL ROAD

**SOUTH AFRICAN NATIONAL ROADS AGENCY SOC (LIMITED)
REPUBLIC OF SOUTH AFRICA**

N3 TOLL CONCESSION (RF) (PROPRIETARY) LIMITED

CONTRACT N.003-041-2025/1

**PROFESSIONAL SERVICES FOR THE ROLE OF THE
INDEPENDENT ENGINEER ON THE N3 TOLL ROAD
CONCESSION CONTRACT**

THIS DOCUMENT COMPILED BY:

The Regional Manager (Eastern Region)
SANRAL
58 Van Eck Place
PIETERMARITZBURG
3200

The Chief Executive Officer
N3TC Head Office
1st Floor Block D
Southdowns Office Park
22 Karee Street
IRENE
0157

TABLE OF CONTENTS	PAGE
PART C1 AGREEMENTS & CONTRACT DATA	C-2
PART C2 PRICING DATA	C-48
PART C3 SCOPE OF WORK	C-58
PART C4 ANNEXURES	C-72

PART C1 Agreements & Contract Data

TABLE OF CONTENTS	PAGE
C1.1 FORMS OF OFFER AND ACCEPTANCE.....	C-3
C1.1.1 FORM OF OFFER (Incorporating SBD7)	C-3
C1.1.2 FORM OF ACCEPTANCE (Incorporating SBD7).....	C-5
C1.1.3 APPENDIX TO FORM OF ACCEPTANCE	C-8
C1.1.4 FORM OF BANKING DETAILS	C-9
C1.1.5 TAX COMPLIANCE PERMISSION DECLARATION.....	C-13
C1.2 CONTRACT DATA	C-14
C1.2.1 CONDITIONS OF CONTRACT	C-14
C1.2.2 CONTRACT DATA: INFORMATION PROVIDED BY THE EMPLOYER.....	C-40
C1.2.3 CONTRACT DATA: INFORMATION PROVIDED BY THE TENDERER	C-42
C1.2.4 SCHEDULE 2: BASIC SERVICES REQUIRED FROM THE IE.....	C-44

Notes to tenderer

1. If more than one alternative tender is submitted each shall be numbered and submitted on a separate Form of Offer duly completed and signed.

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 N.003-041-2025/1
PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3
TOLL ROAD CONCESSION CONTRACT

I/we, by signing this part of the forms of offer and acceptance, confirm that I/we practise the principles of corporate governance that abhors corruption and fraud and that 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.

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 Service Provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of 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 C2.2: PRICING SCHEDULE IS

.....

..... (in words)

(R..... in figures)

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

B. PREFERENCE CLAIMED

I/we claim the following B-BBEE contributor status level as per Returnable Schedule Form A18 subject to Tender Data C.3.11.8. In the event of any difference between the above stated status level and the Verification Certificate attached to Form A12, the Verification Certificate shall apply.

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 Service Provider in the conditions of contract identified in the contract data.

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 A10 by the tenderer and that it is made free from any fraud, corruption and misrepresentation.

Yours faithfully

,

SIGNATURE: DATE:

NAME (IN CAPITALS):

CAPACITY:

Date and minute reference of Board resolution if different from returnable schedule Form A2: Certificate of Authority for signature

NAME AND ADDRESS OF ORGANISATION:
.....

NAME AND SIGNATURE OF WITNESSES:

SIGNATURE: DATE:

NAME (IN CAPITALS):

SIGNATURE: DATE:

NAME (IN CAPITALS):

C1.1.2 FORM OF ACCEPTANCE (Incorporating SBD7)

To (Name of successful tenderer)

Dear Sir,

CONTRACT N.003-041-2025/1: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

ACCEPTANCE OF OFFER

1. It is our pleasure to inform you that the South African National Roads Agency SOC Ltd (the Employer) accepts your (*select if applicable corrected/corrected alternative/alternative*) offer in the amount of R..... (i.e. including VAT but excluding CPA and any contingent sum not in the priced schedule).
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, including the set-off of any debt agreed to which is due and payable as per Returnable Schedule Form A4.
3. 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 the Work,
Part C4: Annexures
together with issued drawings and other documents, or parts thereof, which may be incorporated by reference into Parts C1 to C5 listed above.
4. 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. (*If no deviation state "There are no deviations, qualifications or changes to the documents". Addenda issued during the tender period are deemed not to be deviations to the tender documents and schedules.*)
5. Notwithstanding the need to agree the mandate required by Section 37 of the Occupational Health and Safety Act (Act 85 of 1993) a pro-forma of which is attached for your reference, we hereby appoint you as our Agent in terms of Regulation 5(5) of the Construction Regulations, GNR 84 of 2014.
6. In terms of the Employer's Supply Chain Management (SCM) Policy for Infrastructure Procurement and Delivery Management we hereby appoint you as a member/technical advisor of the following committees:
 - (i) Procurement Documentation Committee and
 - (ii) Bid Evaluation Committee (BEC).
7. A SARS compliance check has been done on you and you are found to be (*select: compliant or non-compliant*). (*Note to compiler: check SARS website for compliance. If not compliant add the following sentence: Within 7 (seven) working days of the date of this Form of Acceptance you shall provide proof that you are SARS 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) Proof of insurance in terms of the information provided in the contract data and clause 18 and 19 of the General Conditions of Contract. Proof of validity of insured cover shall be provided on a monthly basis until contract completion.
 - (ii) Completed Form of Banking details which is attached hereto (Form C.1.1.4).

- (iii) Completed Tax Compliance Permission Declaration which is attached hereto (Form C.1.1.5).
- (iv) Proof of registration on the Employer's Project Information Module.
- (v) Copy of the Joint Venture Agreement. *(Note to compiler: Delete if JV is not applicable)*
- (vi) Details of personnel

Failure to fulfil this obligation shall constitute a repudiation of this agreement. In addition to any other rights of remedy the Service Provider shall, if (i) to (iv) above has not been met, be automatically barred from tendering on any of our future tenders for a period determined by us but not less than 12 (twelve) 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 seven (7) 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 performance of the service shall be
11. 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.
12. The approved Key Persons for this project are:

Key Position	Name
.....
.....
.....

SIGNATURE: DATE:
.....

NAME (IN CAPITALS):

CAPACITY:

Provincial Head

EMPLOYER'S NAME AND ADDRESS: **South African National Roads Agency SOC Limited**

.....
.....

NAME AND SIGNATURE OF WITNESSES:

SIGNATURE: DATE:

NAME (IN CAPITALS):

SIGNATURE: DATE:

NAME (IN CAPITALS):

AUTHORITY TO ACT: SANRAL's Delegation of Powers 2.4.1.2

SIGNATURE: DATE:

NAME (IN CAPITALS):

CAPACITY: **N3TC Representative**

EMPLOYER'S NAME AND ADDRESS: **N3 TOLL CONCESSION (RF) (PROPRIETARY) LIMITED**

.....
.....

NAME AND SIGNATURE OF WITNESSES:

SIGNATURE: DATE:

NAME (IN CAPITALS):

SIGNATURE: DATE:

NAME (IN CAPITALS):

AUTHORITY TO ACT: **N3TC Board Resolution "Authority to Act"**

C1.1.3 APPENDIX TO FORM OF ACCEPTANCE

CONTRACT N.003-041-2025/1

PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE
N3 TOLL ROAD CONCESSION CONTRACT

Schedule of deviations.

Notes:

- 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 incorporate into the final draft of the Contract.

The deviations listed below constitute agreed variations/amendments to the tender document negotiated between the tenderer and the employer based on information provided in Form A10 by tenderer or imposed conditions of award. Addenda issued during the tender period are deemed not to be variations to the tender.

1. Subject:
Details:
2. Subject:
Details:
3. Subject:
Details:
4. Subject:
Details:

By the duly authorised representatives signing this agreement, the Employer and the tenderer agree to and accept the foregoing 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 FORM OF BANKING DETAILS

Notes to Tenderer

- 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.**
 - 3. If you are not registered as a vendor with the Employer, you are required to supply:**
 - a completed SANRAL Vendor Application Form (a copy of the Application Form is provided below).**
-



APPLICATION FOR VENDOR REGISTRATION

Vat Reg: 4220186250

Vendor Name as per Company Registration

Joint Venture (JV)	Yes	NO	*If yes provide JV agreement
--------------------	-----	----	------------------------------

Business Physical Address Town/City Country: South Africa Postal Code:	Business Postal Address Town/City Country: South Africa Postal Code:
---	---

Tel No.		Fax No.	
----------------	--	----------------	--

Company Registration number	BBBEE Status Level

Income Tax Number	Vat Registration number

CSD Registration number	CSD unique code

THIS SECTION MUST BE COMPLETED FOR ALL ELECTRONIC PAYMENTS

Name of bank

Account number	Account Type
	Current

Branch name	Branch Code

Applicant's Authorisation Officer: PRINT NAME

--

Applicant's Authorisation Officer: SIGNATURE

--

The following documentation must be submitted with this form:

1. Full Central Supplier Database (CSD) Report.
2. If a Joint Venture is registered, provide all JV partners CSD Reports.
3. If a Joint Venture is registered, provide the JV agreement.
4. An indemnity letter on your letterhead stating your bank details as per CSD Report (use the proforma supplied), in case of a Joint Venture (JV) confirmation of the Leading Partner bank detail or the JV bank detail.
5. B-BBEE Certificate.

All of the above should be emailed to the appropriate office as indicated:

<input type="checkbox"/>	Head Office: procurementho@nra.co.za
<input type="checkbox"/>	Northern Region: procurementnr@nra.co.za
<input checked="" type="checkbox"/>	Eastern Region: procurementnr@nra.co.za
<input type="checkbox"/>	Southern Region: procurementnr@nra.co.za
<input type="checkbox"/>	Western Region: procurementnr@nra.co.za

OFFICIAL USE ONLY**Region:**

HO	NR	ER X	SR	WR
-----------	-----------	-----------------	-----------	-----------

Type of vendor:

CONTRACT	SUNDRY	PERSONNEL
-----------------	---------------	------------------

Status of vendor:

NEW	CHANGE	BLOCK	UNBLOCK: REASON
------------	---------------	--------------	----------------------------

AUTHORISING OFFICER REGION:**AUTHORISING OFFICER HO:**

--	--

VENDOR NUMBER ALLOCATED:**REFER TO EXISTING
VENDOR NUMBER**

--

--

SERVICE PROVIDER'S
LETTER HEAD AND
ADDRESS

Date:

The South African National Roads Agency SOC Limited
P O BOX 415
PRETORIA
0001

Attention: Chief Financial Officer

Dear Madam

In consideration of your request to furnish your company with our banking details, we hereby undertake and agree to indemnify SANRAL in full against all consequences, liabilities of any kind whatsoever directly arising from or relating to the said request. This shall include but not limited to any incorrect information/ details provided by us.

We further confirm that the below are 's correct bank account details, as per the attached CSD Report:

Account Name:
Bank:
Branch Name:
Branch Code:
Account No:

Please note that the undersigned is an authorised signatory of the company.

Kind Regards

.....
Signature

Name:
Designation:
ID number:

Date:

C1.1.5 TAX COMPLIANCE PERMISSION DECLARATION

CONTRACT N.003-041-2025/1
PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE
N3 TOLL ROAD CONCESSION CONTRACT

Note to Tenderer:

In terms of National Treasury Instruction No 3 of 2014/2015 with reference to the Public Finance Management Act, 1999 (Act No 1 of 1999) and Regulations, the Service Provider and sub-contractors are required to provide the employer with written confirmation to access the SARS Electronic Tax Compliance Status (TCS) system to verify and continuously track the tax compliance status of all persons conducting business with the State.

The Service Provider 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

In addition, the Service Provider shall obtain written consent from each of its sub-contractors,
undisclosed principals and partners involved in this contract confirming that SARS may, on an ongoing
basis during the contract term disclose the sub-contractors' tax compliance status to the Employer. For
this purpose the Service Provider shall provide the Employer with the unique security personal
identification number (PIN) for each of its sub-contractors, undisclosed principals and partners involved
in this contract.

In the event of a joint venture each member shall comply with the above requirement.

.....
SIGNATURE

.....
DATE

C1.2 CONTRACT DATA

C1.2.1 CONDITIONS OF CONTRACT

CONTRACT N.003-041-2025/1

PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

The Conditions of Contract reflected in this section mirrors Annexure 19: Independent Engineer's Agreement of the N3 Toll Road Concession Contract. Following the award of this Contract to the successful bidder, the newly appointed Independent Engineer will be required to enter into this Agreement between the:

- (i) **SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED** (Registration No: 98/09584/06) of 48 Tambotie Avenue, VAL DE GRACE, 0184, Pretoria (hereinafter called the "**Agency**");
- (ii) **N3 TOLL CONCESSION (RF) (PROPRIETARY) LIMITED** (Registration No: 1998/020534/07) of • (hereinafter called the "**Concessionaire**"); and
- (iii) • (Registration No: •) of • (hereinafter called the "**Independent Engineer**")

CONTENTS

CLAUSE	PAGE
1. Definitions	C-17
2. Interpretation	C-19
3. Scope of Services	C-19
4. Duty of Care and Exercise of Authority	C-20
5. Property of the Agency and Concessionaire	C-21
6. Decisions by the Independent Engineer	C-21
7. Provision of Office Accommodation	C-22
8. Information	C-22
9. Decisions by the Agency and Concessionaire	C-22
10. Access and Assistance	C-22
11. Sub-Consultants	C-23
12. Supply of Personnel	C-23
13. Representatives	C-23
14. Changes in Personnel	C-23
15. Liability between the Parties	C-24
16. Duration of Liability	C-24
17. Maximum Liability and Indemnity	C-24
18. Insurances for Liability and Indemnity	C-25
19. Insurance of the Property of the Concessionaire	C-26
20. Commencement and Completion	C-26
21. Payment for Services Provided before Signature	C-26
22. Additional Services	C-26
23. Further Proposals	C-27
24. Delays	C-27
25. Force Majeure	C-27
26. Suspension or Termination	C-28
27. Exceptional Services	C-30
28. Rights and Liabilities of Parties	C-30
29. Payment to the Independent Engineer	C-31
30. Time for Payment	C-31
31. Currency of Payment	C-31
32. Conditions for Payment	C-32
33. Independent Audit	C-32
34. Languages and Law	C-32
35. Assignment and Sub-Contracts	C-32

36.	Copyright.....	C-32
37.	Conflict of Interest.....	C-33
38.	Notices	C-33
39.	Publication	C-33
40.	Resolution of Disputes	C-33
41.	Termination of the Concession Contract	C-37
42.	Miscellaneous Provisions	C-37

SCHEDULE 1 C-40

C1.2.2	CONTRACT DATA: INFORMATION PROVIDED BY THE EMPLOYER.....	C-40
C1.2.3	CONTRACT DATA: INFORMATION PROVIDED BY THE TENDERER	C-42
C1.2.4	SCHEDULE 2: BASIC SERVICES REQUIRED FROM THE IE.....	C-44

RECITALS WHEREAS:

- (A) The Agency entered into an agreement with the Concessionaire dated 27 May 1999 (the **"Concession Contract"**) for the design, construction, commissioning, financing, Operation and Maintenance and repair of the Highway, the design, construction and financing of the Associated Facilities and the undertaking of any Developments (the **"Project"**).
- (B) The Concession Contract has been amended by the Concession Contract Amending Agreement and the Second Concession Contract Amending Agreement, dated 18 October 1999 and 22 November 2005 respectively (hereinafter referred to as the **"Concession Contract Amending Agreements"**). Any reference in this Agreement to the Concession contract shall be the Concession Contract as amended by the Concession Contract Amending Agreements.
- (C) The Agency and the Concessionaire wish to appoint the Independent Engineer ("IE") to undertake and perform, in relation to the Project, the Services.
- (D) The Independent Engineer ("IE") hereby accepts such appointment.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

DEFINITIONS AND INTERPRETATION

1. Definitions

- 1. The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:
 - (i) "Additional Services" means any substantial extra work to be performed by the Independent Engineer (IE), as the Agency and/or the Concessionaire may reasonably require, which is not included under Basic Services.
 - (ii) "Administered Contracts" means the Concession Contract, as amended by the Concession Contract Amending Agreements, the Construction Contracts and, the Operation and Maintenance Contracts in force during the term of this Agreement and any other contracts applicable to the Project agreed by all the

Parties in writing to be administered by the Independent Engineer, or any one of them as the context may require.

- (iii) "Agreed Compensation" means additional sums payable to the Independent Engineer (IE) in accordance with Clause 29.
- (iv) "Agreement" means this Independent Engineers Agreement.
- (v) "Basic Services" means services defined as Normal Services and those services set out in Schedule 2 hereto.
- (vi) "Conditions" means the clauses 1 to 43 inclusive of this Agreement.
- (vii) "Construction Documents" has the meaning ascribed to it in the Construction Contracts.
- (viii) "day" means the period between any one midnight and the next.
- (ix) "Exceptional Services" means the exceptional services as operated to be performed by the Independent Engineer under Clause 27.
- (x) "month" means a period of one month according to the Gregorian calendar commencing with any day of the month.
- (xi) "Operations Document" has the meaning ascribed to it in the Operations Contract.
- (xii) "Party" or "Parties" means the parties named in the Formal Agreement or any one of them and "third party" means any other person or entity as the context requires.
- (xiii) "Project" has the meaning given to it in recital (A) of this Agreement.
- (xiv) "Services" means the services to be performed by the Independent Engineer in accordance with the Agreement and comprises Basic Services, the Additional Services and the Exceptional Services.
- xv) "Targeted Enterprise" means a registered consulting engineering firm who is an EME (BEP)* or QSE (BEP)*, sub-contracted by the Service Provider to perform a specified percentage of work stated in the Contract Data under his guidance and which complies with the following:
 - a) Is at least 51% owned by black people, and;
 - b) does not share equity holding with the Service Provider; and
 - c) is registered in terms of the Company's Act, 2008 (Act No. 71 of 2008) or Close Corporation Act, 1984 (Act No. 69 of 1984); and
 - d) is registered on the National Treasury's Central Supplier Database (CSD).

* NOTE: All references to EME, QSE, B-BBEE status are in terms of the amended Construction Sector Codes published in Notice 931 of 2017 in Government Gazette No 41287 on 1 December 2017.

Words and expressions defined in the Administered Contracts shall have the same meanings and apply mutatis mutandis to this Agreement unless otherwise defined herein. Where there is any inconsistency between a definition in the Concession Contract and any other Administered Contract, the definition in the Concession Contract shall apply.

2. Interpretation

- 1.1 The headings in the Agreement shall not form part of or be taken into account in its interpretation.
- 1.2 The singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.
- 1.3 Unless otherwise indicated, references to Clauses and Appendices are references to Clauses and Appendices of this Agreement

OBLIGATIONS OF THE INDEPENDENT ENGINEER

3. Scope of Services

- 1.4 The Independent Engineer (IE) shall carry out and complete the Basic Services upon the terms and conditions set out in this Agreement and in accordance with all instructions and directions given to it by the Agency and/or the Concessionaire. The scope of the Basic Services is stated in Schedule 2.
- 1.5 The Independent Engineer (IE) shall carry out and complete Additional Services if so instructed:
 - 1.5.1 in respect of the Concession Contract, by the Agency or the Concessionaire; and
 - 1.5.2 in respect of all other Administered Contracts, by the Agency or Concessionaire.
- 1.6 The Services (including the omission of work and whether or not the omitted work is to be undertaken by another consultant or contractor) may be varied on the instructions of:
 - 1.6.1 in the case of Services required to be performed under the Concession Contract, the Agency and the Concessionaire jointly; and
 - 1.6.2 in the case of Services required to be performed under the other Administered Contracts, the Concessionaire, which instructions may only be given with the prior approval of the Agency, such approval not to be unreasonably withheld or delayed.
- 3.4 The Independent Engineer shall be deemed to have full knowledge and understanding of and shall carry out the duties of the Independent Engineer prescribed in the Administered

Contracts. In addition, the Independent Engineer shall be deemed to have full knowledge and understanding of all warranties given by the Concessionaire under all the Administered Contracts. The Independent Engineer shall not be relieved from the performance of any of its obligations hereunder or be entitled to any allowance of time or to any additional payment on the grounds that it was not cognisant of any provisions of the Administration Contracts.

- 3.5 The Independent Engineer shall enter into a contract (through sub-contracting) with a Targeted Enterprise(s) to perform a percentage of work as stated in the Contract Data.

4. Duty of Care and Exercise of Authority

- 1.7 The Independent Engineer warrants to the Agency and the Concessionaire that in respect of the Services performed or to be performed by it, it has exercised and will continue to exercise all reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held itself out as suitable and competent to perform the Services and who is experienced in providing services similar to the Services in relation to projects of a similar size, scope, nature and complexity to the Project.
- 1.8 Where the Services include the exercise of powers or discretion or the performance of duties authorised or required by the terms of any of the Administered Contracts, the Independent Engineer shall:
- 1.8.1 act in accordance with such Administered Contract and comply with its relevant requirements;
 - 1.8.2 when exercising its functions under the Administered Contracts act fairly honestly, professionally and independently and when exercising its functions under schedule 2 act fairly and independently between the Agency on the one hand and the Concessionaire on the other hand;
 - 1.8.3 in respect of exercising its functions under the Concession Contract on the one hand and the other Administered Contracts on the other on the same facts and circumstances, act consistently between the relevant Contracts.
- 1.9 The Independent Engineer's duties to carry out the functions are as follows:-
- 1.9.1 in respect of the Concession Contract, its duties are owed to both the Agency and the Concessionaire; and
 - 1.9.2 in respect of the other Administered Contracts, its duties are owed to the Concessionaire.

The Independent Engineer shall at all times when it is exercising authority or otherwise discharging its professional duties, act fairly, impartially and independently and as a skilled professional, not as an arbitrator.

- 1.10 The Independent Engineer shall at its own cost keep all records including test results available, in hard copy and backed up in electronic format in a separate and secure location, for inspection by the Agency and the Concessionaire during the period of

this Agreement and shall deliver all such records and results to the Agency on expiration or earlier termination of this Agreement.

- 1.11 The Independent Engineer shall co-operate with and provide all reasonable assistance to any contractors or other consultants or other service providers who are or may be engaged by the Agency, the Concessionaire and/or the Lenders in connection with the Project and shall not interfere with or affect the work being performed by such other contractors, consultants or service providers.
- 1.12 The Independent Engineer shall, in the performance of the Services, comply with all applicable law, regulations, codes of practice and relevant international standards and shall, at its own cost, ensure that it holds and will continue to hold all such licenses and approvals as may be required for the performance of the Services.
- 1.13 No enquiry, inspection approval, sanction, comment, consent, decision or instruction at any time given by or on behalf of the Concessionaire or Agency shall operate to exclude or limit the Independent Engineers obligation to exercise all the skill, care and diligence required by this clause.
- 1.14 The Independent Engineer shall provide and allocate suitable, properly trained and adequate resources in order to duly and properly perform timeously all its obligations under this Agreement.
- 1.15 The Independent Engineer shall keep the Agency and the Concessionaire informed on all matters of interest which relate or pertain to the Project.
- 1.16 The Independent Engineer shall exercise the Services so as not to unreasonably delay or disrupt the Project.
- 4.11 The Independent Engineer shall audit and certify that the Concessionaire has complied with the requirements of Clause 3.10 of the Concession Contract in order to facilitate the Transfer of the Highway to the Agency at the end of the Concession Period, namely 1 November 2029.

5. Property of the Agency and Concessionaire

Any facilities or consumables whether of a permanent or temporary nature supplied by or paid for by the Agency or the Concessionaire for use by the Independent Engineer for the purpose of the Services shall remain the property of the Agency or the Concessionaire as appropriate and where practicable shall be so marked. The Independent Engineer shall upon the expiry of this Agreement or its earlier termination or at the request of the Agency and/or the Concessionaire furnish inventories to the Agency and/or the Concessionaire (as applicable) of such facilities or consumables which have not been consumed in the performance of the Services and shall deliver the same as directed by the Agency and/or the Concessionaire. The preparation of such inventories and their delivery shall not be regarded as an Additional Service.

6. Decisions by the Independent Engineer

On all matters properly referred to it for consent, approval, decision or determination by the Agency, the Concessionaire, the Contractor or the O&M Contractors in

accordance with the Administered Contracts, the Independent Engineer shall give its consent, approval, expression of satisfaction or dissatisfaction, decision or determination in writing within the time period referred to in the relevant Administered Contract or if no such period is prescribed, within a reasonable time period which in such latter event. Shall be no later than 20 days after being referred to the Independent Engineer. The Independent Engineer shall exercise its rights under this Agreement reasonably and fairly and shall not unreasonably withhold or delay the giving of its consent, approval, expression of satisfaction or dissatisfaction, decision or determination.

OBLIGATIONS OF THE AGENCY AND THE CONCESSIONAIRE

7. Provision of Office Accommodation

- 1.17 The Independent Engineer shall provide its own office accommodation and services.

8. Information

- 1.18 The Agency and the Concessionaire shall as soon as reasonably practicable after the Independent Engineer's request therefore make available to the Independent Engineer, free of charge, all information and documents in respect of the Project as are requested by the Independent Engineer which are in their possession or control and which are necessary and are reasonably required for the execution of the Services.
- 1.19 Without limitation, the Concessionaire must ensure that the Independent Engineer is provided with all information and documents required under any Construction Contract and any Operation and Maintenance Contract to be provided by the Contractor or O&M Contractor as soon as reasonably practicable and, in any event within the time period required by the relevant Construction Contract or Operation and Maintenance Contract by exercising its rights under those documents.

9. Decisions by the Agency and Concessionaire

On all matters properly referred to them in writing by the Independent Engineer, the Agency and Concessionaire shall give their respective decisions in writing and within the time prescribed in the Administered Contracts and, if no time is prescribed, within a reasonable time so as not to delay the performance of the Services.

10. Access and Assistance

The Agency and the Concessionaire shall:

- 1.20 provide to the Independent Engineer and its personnel such reasonable access to the Site as is required for the proper performance of the Services; and
- 1.21 use reasonable efforts to procure for the Independent Engineer and its personnel such access to other relevant organisations for collection of information by the Independent Engineer to enable the Independent Engineer to perform the Services properly which access the Agency or the Concessionaire only can procure,

subject to the observance of any rules or requirements of the Concessionaire as to safety or security on the Site which are applied generally by the Concessionaire, the Contractors or O&M Contractors.

Such assistance shall not relieve the Independent Engineer from any of its obligations under the Agreement; including its obligation to comply with all applicable requirements of any governmental or other authorities having jurisdiction over this Agreement and/or the Project.

11. Sub-Consultants

If any determination which is required to be made by the Independent Engineer including the evaluation or assessment of any matter outside the Independent Engineer's field of expertise, the Independent Engineer shall appoint a sub-consultant the identity of which shall have the prior approval of the Agency and the Concessionaire. The Independent Engineer shall be responsible for payment to its sub-consultants. No appointment of any sub-consultants shall relieve the Independent Engineer of its liabilities and responsibility under this Agreement and the Independent Engineer shall remain fully responsible for all Services as if they had been performed by the Independent Engineer.

PERSONNEL

12. Supply of Personnel

Details of the Independent Engineer's personnel shall be submitted to the Agency and the Concessionaire within 14 days of the Form of Acceptance and subsequently within 7 days of any change in personnel. The Independent Engineer warrants that the qualifications and experience of such personnel shall be appropriate for their respective assignments and such personnel shall be approved by the Agency and the Concessionaire. Such approval shall not relieve the Independent Engineer of any of its obligations under the Agreement.

13. Representatives

For the administration of the Agreement the Agency, the Concessionaire and the Independent Engineer shall each designate an individual to be its representative. The Parties confirm that their respective representatives have the power and authority to bind the relevant Party (as the case may be) for all purposes in connection with this Agreement. The designated representatives are specified in Schedule 1 and may be changed by written notice to the other Parties.

14. Changes in Personnel

- 1.22 If so instructed by the Agency and the Concessionaire in writing to replace any person, the Independent Engineer shall immediately arrange for replacement with a person of appropriate suitability and competence as approved by the Agency and the Concessionaire. The cost of such replacement shall be borne by the Independent Engineer.
- 1.23 The Independent Engineer shall obtain prior written approval of the Agency and the Concessionaire for any change to any personnel employed by the Independent Engineer, such approval shall not be unreasonably withheld.

- 1.24 Any replacement personnel shall have at least the equivalent experience and expertise as the personnel they replace.

LIABILITY AND INSURANCE

15. Liability between the Parties

- 1.25 Subject to Clause 17.1, the Independent Engineer shall indemnify the Agency and/or the Concessionaire for any loss, damage or expense incurred to the extent that the same is caused or contributed to by any act, omission or default of or breach of this Agreement by the Independent Engineer.
- 1.26 Where the obligations of the Agency and the Concessionaire under this Agreement are expressed otherwise as to be owed by them jointly, the Agency and the Concessionaire shall be severally liable to the Independent Engineer for breach of their respective obligations to the Independent Engineer.

16. Duration of Liability

Neither the Agency, the Concessionaire nor the Independent Engineer shall be entitled to bring an action against the other for any loss or damage resulting from the other Party's default under this Agreement unless a claim is made against the other Party before the expiry of the period stated in Schedule 1, or such earlier date as may be prescribed by law provided that the period stated in Schedule 1 commences on the date when the claim arose or, if the claim is based on matters which were not capable of discovery at that time, from the date of discovery of the matters entitling the party to make such a claim.

17. Maximum Liability and Indemnity

- 1.27 The maximum liability of one Party to another Party under this Agreement shall, other than in respect of liability under Clauses 17.2 and 17.3, be limited to the relevant amount stated in Schedule 1. This limitation is without prejudice to any Agreed Compensation specified under Clause 30.2 or otherwise imposed by the Agreement.

Each Party agrees to waive all claims against the other in so far as the aggregate of compensation which would otherwise be payable exceeds the relevant maximum amount stated in Schedule 1.

- 1.28 The Independent Engineer shall indemnify the Agency and the Concessionaire against all claims, liability, loss, damage and expenses in respect of death of or injury to persons and damage to property, and liability of any kind in relation to environmental matters, arising out of or in connection with or by reason of performance of its obligations hereunder or any breach, default or negligence of the Independent Engineer or persons for whom it is responsible under or pursuant to this Agreement.
- 1.29 Clauses 15 and 17.1 do not apply to claims arising from gross negligence, fraud, bad faith, deliberate default or reckless misconduct.

18. Insurances for Liability and Indemnity

- 1.30 Without prejudice to its obligations under this Agreement or otherwise at law, the Independent Engineer shall, at its own cost:
- 1.30.1 effect and maintain professional indemnity insurance from the date of this Agreement until the expiry of 6 years from the completion of the Services in respect of or for an amount not less than the amount stated in Schedule 1 in respect of each and every claim;
 - 1.30.2 effect and maintain insurance against public/third party liability from the date of this Agreement until completion of the Services in respect of or for an amount not less than the amount stated in Schedule 1 in respect of each and every claim;
 - 1.30.3 effect and maintain motor vehicle liability insurance from the date of this Agreement until completion of the services in an amount not less than the amount stated in Schedule 1 in respect of each and every claim;
 - 1.30.4 effect and maintain necessary insurances to ensure that all statutory obligations concerning the Compensation for Occupational Injuries or Diseases Act are complied with; and
 - 1.30.5 effect and maintain employer's common law liability insurance in respect of liability to employees for an amount not less than the amount stated in Schedule 1 in respect of each and every claim,
- on terms and with well established insurers of good repute, approved by the Agency and the Concessionaire. The policies effected to comply with the obligations under this Clause shall be non-cancellable save in the event of non payment of premium.
- 1.31 The Agency or Concessionaire may at their sole discretion require the Independent Engineer to increase the level of cover in respect of the insurances referred to in Clause 18.1 or such other additional insurances.
- If so requested, the Independent Engineer shall make all reasonable efforts to effect such additional insurance with an insurer and on terms acceptable to the Agency and the Concessionaire.
- The cost of effecting additional insurance shall be at the expense of the Agency or the Concessionaire which requested such additional insurance or as otherwise agreed.
- 1.32 The Independent Engineer shall immediately inform the Agency and the Concessionaire if any of the insurances referred to in Clause 18.1 cease to be available or are otherwise not renewed or maintained or for any reason become void or unenforceable.
- 1.33 The Independent Engineer shall provide the Agency and the Concessionaire with certified copies of such insurance policies and, when required by the Agency or Concessionaire, produce for inspection documentary evidence to show that such insurances referred to in Clause 18.1 are being maintained.

- 1.34 The Independent Engineer shall ensure that the Agency and the Concessionaire are named on the insurance policies as additional insured's and that such policies are for the benefit of the Concessionaire and Agency.
- 1.35 All insurances to be effected in terms of this Agreement shall be reviewed annually by the Parties and, if necessary, adjusted in order to ensure that terms and sums are commensurate with the related risks.

19. Insurance of the Property of the Concessionaire

If approved in writing by the Concessionaire, the Independent Engineer shall insure on terms acceptable to the Concessionaire:

- 1.36 against loss or damage to the property of the Concessionaire supplied or paid for under Clause 7;
- 1.37 against liabilities arising out of the use of such property.

The cost of such insurance shall be at the expense of the Concessionaire.

COMMENCEMENT, COMPLETION, ADDITIONAL SERVICES AND TERMINATION

20. Commencement and Completion

Notwithstanding the date of signature of this Agreement, the Services shall be commenced and completed at the times or within the periods stated in Part C1.2.2 Contract Data subject to any extension in accordance with the Agreement.

21. Payment for Services Provided before Signature

Notwithstanding the commencement of the Services prior to the date of signature of this Agreement, payment for such Services shall be limited to the fee in Part C2.2 Pricing Schedule calculated as from the Commencement of Service date.

22. Additional Services

- 1.38 The Agency and/or the Concessionaire may require the Independent Engineer to undertake Additional Services.
- 1.39 Unless otherwise agreed between the Agency and the Concessionaire, Additional Services shall be provided at the cost of the Party requesting such Additional Services.
- 1.40 The fee for any Additional Services shall be agreed by the Party requesting the Additional Services and the Independent Engineer prior to performance of the Additional Services and such fee shall represent a fair and reasonable fee for such Additional Services.
- 1.41 The fee for Additional Services shall be paid as a lump sum by the relevant Party stated in Clause 22.1.

23. Further Proposals

If requested in writing by the Agency or the Concessionaire, the Independent Engineer shall submit proposals for altering the Services.

24. Delays

If the performance of the Services is materially impeded or delayed by any act of prevention or default of the Agency or the Concessionaire or their contractors or agents as a result of which the extent of the Services or the time that is required for their performance is materially increased:

- 1.42 The Independent Engineer shall give written notice to the Agency and the Concessionaire of the relevant circumstance and probable effects within the 30 (thirty) days of the commencement of such circumstance;
- 1.43 Any increase in the extent of the Services shall be regarded as Additional Services only if such notice has been given in strict accordance with Clause 24.1 and the Independent Engineer submits its proposed addition to the fee being a fair and reasonable amount for such Additional Services together with all necessary supporting information no later than 30 (thirty) days after the cessation of the relevant circumstance;
- 1.44 The time for completion of the Services shall be extended on a fair and reasonable basis; and
- 1.45 The Party which impeded or delayed the Services, or the Party to which any contractor which delayed or impeded the Services is contracted, shall be liable for cost of such Additional Services.

25. Force Majeure

1.46 Force Majeure Event shall mean:

- 1.46.1 any of the following events: war, whether declared or not, revolution, riot, strikes (except strikes by or affecting employees of the Independent Engineer or any other person undertaking any part of the Services which strike(s) are not part of or directly related to any more widespread or general strike or other industrial action), insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; and
- 1.46.2 which materially adversely affects the ability of the Independent Engineer to perform its obligations under this Agreement;

PROVIDED that the Independent Engineer shall not be entitled to treat an event described in Clause 25.1.1 as a Force Majeure Event to the extent that:

- (a) it would not have occurred but for the breach of the Independent Engineer of this Agreement;
- (b) it could have been prevented through the exercise of proper foresight and diligence; or

- (c) its occurrence could reasonably have been anticipated and/or appropriate anticipatory mitigation measures undertaken.
- 1.47 The Independent Engineer shall promptly notify the other Parties of the occurrence of a perceived Force Majeure Event and when such an event has ceased. The Parties shall agree whether the perceived Force Majeure Event is to be considered a Force Majeure Event for the purpose of this Clause.
- 1.48 Subject to Clause 25.4, the Independent Engineer shall be excused from performance of its obligations under this Agreement to the extent that it is unable to perform those obligations as a result of the Force Majeure Event and no Party shall be entitled to claim damages, penalties or other compensation or as a result of such failure to perform.
- 1.49 The Independent Engineer shall, to the maximum extent possible, continue to perform the obligations under this Agreement during the occurrence of any Force Majeure Event and shall notify the other Parties of any proposals, including alternative means of performance, but shall not implement such proposals without the consent of the other Parties.
- 1.50 If it is agreed under Clause 25.2 that a Force Majeure Event has occurred, the Parties shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from such Force Majeure Event.
- 1.51 If a Force Majeure Event (or its consequences) shall continue for 182 or more consecutive days and the Parties have not reached a mutually satisfactory resolution to the changed circumstances, then the Agency together with the Concessionaire shall be entitled to terminate this Agreement upon 28 days' prior written notice.
- 1.52 The foregoing provisions shall not excuse or release the Independent Engineer from obligations due or performable, or compliance required, under this Agreement prior to the above mentioned failures or delays, in performance not due to the occurrence of the Force Majeure Event or obligations not affected by the Force Majeure Event. The Independent Engineer shall continue its performance under the Agreement when the effects of the Force Majeure Event are removed.
- 1.53 There shall be no additional cost to the Agency or the Concessionaire as a result of a Force Majeure Event and during continuation of the Force Majeure Event the fee in Part C2.2 shall be reduced to reflect the reduction in Services being performed by the Independent Engineer.

26. Suspension or Termination

1.54 By Notice of the Agency or Concessionaire

- 1.54.1 The Agency with the consent of the Concessionaire or the Concessionaire with consent of the Agency may suspend all or part of the Services by written notice of at least 28 (twenty eight) days to the Independent Engineer who shall immediately proceed in an orderly manner to take such steps as are necessary to bring to an end, in the shortest time possible, its duties under this Agreement as economically as possible to the Agency and the Concessionaire. Where the Services of the Independent Engineer have been suspended pursuant to this Clause 26.1.1, the Agency and the Concessionaire shall pay any instalments of the payment due to the

Independent Engineer commensurate with the Services performed by the Independent Engineer up to the date of suspension less the amount of any payments previously made by the Agency and the Concessionaire to the Independent Engineer under the Agreement and the Agency and the Concessionaire shall not be liable to the Independent Engineer for any loss of profit, loss of contract or other loss and expense arising out of or in connection with such suspension save as expressly provided in this Agreement.

1.54.2 The Independent Engineer shall resume the performance of suspended Services if instructed by the Party who suspended performance. Payment made in accordance with this Clause 26 in the event of any suspension shall rank as payment on account towards payment to which the Independent Engineer is entitled under this Agreement upon resumption of the Services.

1.54.3 If:

- (a) the Project is cancelled or all the Services are suspended for a period of 6 months;
- (b) the Independent Engineer is in breach of any of its obligations under this Agreement (including, without limitation the obligation to provide adequate resources or competent staff to carry out its obligations) and, in the case of a breach capable of remedy, fails to remedy the breach within 10 days after receipt of a written notice from the Agency or the Concessionaire giving particulars of the breach and requiring its remedy or, within such longer period as may be specified in such notice; or
- (c) the Independent Engineer is being or has been wound-up or becomes insolvent or enters into liquidation, receivership, judicial management or other composition with creditors or some other analogous event,

then the Agency or the Concessionaire may, with the consent of the other, at any time thereafter and without prejudice to any other rights or remedies, forthwith terminate this Agreement by written notice.

1.54.4 The Agency or the Concessionaire may, with the consent of the other, at any time by written notice to the Independent Engineer of not less than 28 days terminate the Independent Engineer's appointment and this Agreement without prejudice to any other rights or remedies.

1.55 **By Notice of the Independent Engineer**

If:

- 1.55.1 the Agency or the Concessionaire, as the case may be, fails without reasonable cause to make payment in accordance with Clause 29 within 30 (thirty) days after the due date for payment of an invoice; or
- 1.55.2 the performance of the Services has been suspended pursuant to Clause 26.1 for a period of 182 (one hundred and eighty two) consecutive days,

the Independent Engineer may by 28 (twenty eight) days' notice in writing terminate this Agreement.

Provided that where the Agency or the Concessionaire is in default under Clause 26.2.1, the other Party shall be entitled to make payment to the Independent Engineer of any amount then due in accordance with Clause 29 and to recover the same from the Party in default as a debt.

1.56 Termination of the Concession Contract

- 1.56.1 Subject to Clause 26.3.2, in the event that the Concession Contract is terminated for any reason, any Party may forthwith terminate this Agreement by notice in writing.
- 1.56.2 If this Agreement is terminated in accordance with Clause 26.3.1, prior to the Effective Date, the Independent Engineer shall be paid by the Agency and the Concessionaire such part of the fee as is fairly and properly attributed to the performance of Services properly carried out as at the date of termination and which remains unpaid.

27. Exceptional Services

Upon resumption of the Services or part thereof following a suspension effected in accordance with this Agreement or upon termination of the Agreement, otherwise than pursuant to Clauses 26.1.3 or 26.2.2, any necessary work undertaken by the Independent Engineer with the prior consent of the Agency and the Concessionaire whose consent shall not be unreasonably withheld, which is extra to the Basic Services and Additional Services shall be regarded as Exceptional Services. The performance of Exceptional Services shall, in the case of resumption of the Services or part thereof following a suspension, entitle the Independent Engineer to extra time for its performance and shall, in any event, entitle the Independent Engineer to payment for its performance in accordance with Clause 29.2.

28. Rights and Liabilities of Parties

- 1.57 Termination of the Agreement shall not prejudice or affect the accrued rights or obligations of the Parties.
- 1.58 If the Independent Engineer's appointment is terminated for any reason, the Independent Engineer shall, if instructed by the Agency and/or the Concessionaire, take such steps as may be necessary to organise a safe conclusion of the Services.
- 1.59 Following termination of the Independent Engineer's appointment and subject to any set off or deductions the Independent Engineer may be entitled to make as a result of any breach of this Agreement by the Independent Engineer, the Agency and the Concessionaire shall pay to the Independent Engineer in full and final settlement of any claim which the Independent Engineer may have in consequence thereof any instalments of the payment due to the Independent Engineer commensurate with the Services performed by the Independent Engineer up to the date of termination less the amount of any payments previously made by the Agency and the Concessionaire to the Independent Engineer under this Agreement and the Agency and the Concessionaire shall not be liable to the Independent Engineer for any loss of profit, loss of contract, or other loss and expense arising out of or in connection with such termination save as expressly provided in this Agreement.

PAYMENT

29. Payment to the Independent Engineer

- 1.60 The Agency and the Concessionaire shall pay the Independent Engineer for Basic Services in accordance with these Conditions.
- 1.61 Unless otherwise agreed in writing the Agency and the Concessionaire shall pay, in equal proportions, the Independent Engineer in respect of Exceptional Services:
 - 1.61.1 a fee which represents a fair and reasonable fee for the extra time spent by the Independent Engineer's personnel in the performance of the Exceptional Services; and
 - 1.61.2 the net cost of all other extra expense reasonably and properly incurred by the Independent Engineer as a result of performance of the Exceptional Services.
- 1.62 The obligations of the Agency and the Concessionaire shall be limited to that portion of the cost of the Services to which each has committed itself in accordance with the contract, to which shall be added the cost of Additional Services carried out pursuant to Clauses 22 and 24 and Exceptional Services carried out pursuant to Clause 27.
- 29.4 The cost of the Basic Services shall be borne by the Agency and the Concessionaire in equal proportions. The cost of Additional and Specialist Services shall be borne by the party ordering the service or by the Agency and the Concessionaire in equal proportions [provided such agreement is made in writing before the commencement of such Additional and Specialist Services.

30. Time for Payment

- 1.63 Amounts due to the Independent Engineer shall, subject to Clause 32, be paid within the time stated in Schedule 1 after receipt by the Agency and the Concessionaire respectively of an original V.A.T. invoice together with supporting documentation from the Independent Engineer.
- 1.64 If the Agency or the Concessionaire fails, without reasonable cause, to make payment in accordance with Clause 30.1 the Party in default shall be liable to pay the Independent Engineer Agreed Compensation bearing simple interest on the sum overdue at the rate defined in Schedule 1 from the due date for payment of the invoice until the date of payment of such invoice. Such Agreed Compensation shall not affect the rights of the Independent Engineer stated in Clause 26.2.
- 1.65 The Independent Engineer shall render to the Agency and the Concessionaire on the 28th day of each month starting from the second month in which the Services are commenced an original VAT invoice together with supporting documentation in respect of fees and disbursements payable for the preceding month.

31. Currency of Payment

The currency applicable to the Agreement is the South African Rand.

32. Conditions for Payment

- 1.66 If any item or part of an item in an invoice submitted by the Independent Engineer is contested by the Agency or the Concessionaire, the Party who wishes to make any contest shall give prompt notice to the Independent Engineer (with a copy to the other Party) with reasons and shall not delay payment of the uncontested portion of the invoice.
- 1.67 The Independent Engineer shall provide the Agency and the Concessionaire with such documents, information or other facilities as the Agency or the Concessionaire may reasonably require for the purpose of verifying the amounts claimed as due for payment.
- 1.68 The Agency and the Concessionaire shall be entitled to make an appropriate deduction from any payment due to the Independent Engineer in respect of any Services which have not been performed in accordance with this Agreement and in respect of any other deductions or set-offs which they are properly entitled to make.

33. Independent Audit

The Independent Engineer shall maintain in the Republic of South Africa and make available during normal working hours for audit and inspection up-to-date records which clearly identify relevant time spent in the performance of the Services, the nature of the activities and the expense.

GENERAL PROVISIONS

34. Languages and Law

In Schedule 1 there is stated the language or languages of the Agreement, the ruling language and the law to which the Agreement is subject.

35. Assignment and Sub-Contracts

- 1.69 The Independent Engineer shall not without the prior written consent of the Agency and the Concessionaire assign its rights under or any benefits arising out of this Agreement.
- 1.70 The Agency or the Concessionaire shall be entitled with the prior consent of the other to assign its rights under or benefit arising out of this Agreement without the written consent of the Independent Engineer.
- 1.71 The Independent Engineer shall not without the prior written consent of the Agency and the Concessionaire, unreasonably vary or terminate the appointment of any sub-consultant appointed pursuant to Clause 11.
- 1.72 The Independent Engineer shall not subcontract all of the Services but may contract part of the Services in accordance with Clause 11.

36. Copyright

- 1.73 The Independent Engineer warrants that it has legal and beneficial ownership of copyright and all other intellectual property and design rights in all works and documents produced or to be provided as part of the Services.

- 1.74 The Agency and the Concessionaire shall have, and the Independent Engineer shall hereby grant to each of them, a royalty-free, irrevocable, non-exclusive license to use and re-produce all of the documents, reports or other things which have been or are to be prepared or supplied by the Independent Engineer in the performance of the Services for any purpose whatsoever connected with the Project. Such license shall carry the right of the Agency and the Concessionaire to grant sub-licenses and shall be otherwise transferable without the consent of the Independent Engineer being required. The Independent Engineer shall execute such documents and do such things to give effect to such licenses or sub-licenses.
- 1.75 The Independent Engineer warrants that in the performance of the Services the Independent Engineer and its employees have not and will not infringe any third party's intellectual property rights.

37. Conflict of Interest

Unless otherwise agreed in writing by the Agency and the Concessionaire, the Independent Engineer and its personnel shall have no interest in nor receive remuneration in connection with the Project except as provided for in the Agreement. The Independent Engineer shall not engage in any activity which might conflict with the interests of the Agency or the Concessionaire in relation to the Project.

38. Notices

Notices under the Agreement shall be in writing and will take effect from receipt at the address stated in Schedule 1. Delivery can be by hand or by facsimile against a written confirmation of receipt or by registered letter. The date of receipt of a registered letter shall be deemed to be 10 (ten) days after the date of posting unless proven otherwise by any Party.

39. Publication

Unless otherwise approved by the Agency in writing, the Independent Engineer, either alone or jointly with others, shall not from the date of this Agreement until two years following the completion of the Services or the earlier termination of the Agreement, publish material relating to the Project and the Services.

SETTLEMENT OF DISPUTES

40. Resolution of Disputes

- 1.76 If a dispute of any kind whatsoever arises between the Agency and/or the Concessionaire on the one hand, and the Independent Engineer on the other, in connection with or arising out of this Agreement (not including disputes as to the Services which are to be resolved pursuant to the relevant Administered Contract), then an attempt shall be made by the Parties to settle such dispute amicably and failing settlement within 10 days of a notice initiating attempts at an amicable settlement either Party may send the other Party a written invitation to conciliation which shall take place on the basis contemplated in 40.2 hereunder. If the Parties are unable to agree on a conciliator, either Party may apply to the Arbitration Foundation of Southern Africa ("**AFSA**") to assist the Parties in appointing a conciliator.

1.77 In the case of conciliation:

- 1.77.1 neither Party shall be entitled to be represented at any hearing before, or at, any meeting, or in any discussion, with the conciliator except by any of the following:
- (i) the Party himself, if a natural person,
 - (ii) a partner in the case of a partnership,
 - (iii) a senior executive of the company in the case of a company,
 - (iv) a member in the case of a close corporation,
 - (v) a bona fide employee of the Party concerned, and
 - (vi) a professional engineer appointed for the purpose by the Party concerned;
- 1.77.2 the conciliator 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 conciliator from the other Party or any other person otherwise than at a meeting where both Parties are present or represented.
- 1.77.3 the conciliator shall have the power to propose to the Parties compromise settlements of or agreements in disposal of the whole or portion of the dispute;
- 1.77.4 the conciliator 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 Agreement on which the opinion is based and recording the details of any agreement reached between the Parties during the conciliation;
- 1.77.5 the conciliator's opinion shall become binding on the Parties only to the extent correctly recorded as being agreed by the Parties in the conciliator's written opinion or otherwise as recorded as being agreed in writing by both Parties subsequent to the receipt of the conciliator's opinion;
- 1.77.6 the dispute on any matter still unresolved after the application of the provisions of sub-paragraph 40.2.5 shall be resolved by court proceedings;
- 1.77.7 save for reference to any portion of the conciliator's opinion which has become binding in terms of sub-paragraph 40.2.5, no reference shall be made by or on behalf of either Party, in any proceedings subsequent to conciliation, to the conciliator'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 conciliation;

1.77.8 irrespective of the nature of the conciliator's opinion:

- (i) each Party shall bear his own costs arising from the conciliation, and
- (ii) the Parties shall in equal shares pay the conciliator the amount of his expenses and the amount of his fee based on a scale of fees as agreed between the conciliator and the Parties before the commencement of the conciliation.

1.78 If the dispute is not resolved by means of the conciliation procedure within 30 (thirty) days after entering such process, or at such earlier time as the Parties may agree, the chief executive officers of the Agency and/or the Concessionaire on the one hand, and the senior partner, principal Engineer or chief executive of the Independent Engineer on the other, shall in that respect meet and endeavour to resolve issues between them. The joint and unanimous written decision of such chief executive officers of the Parties shall be binding upon the Parties but if they do not meet or are unable to agree within 60 (sixty) days of the reference to them then the matter may be referred to arbitration pursuant to Clause 40.4.

1.79 Any dispute which cannot be settled amicably pursuant to Clause 40.1 within 90 (ninety) days after receipt by one Party of the other Party's request to do so or such longer period as the Parties may agree or which is not resolved in accordance with Clause 40.2 and/or 40.3 may be referred by any Party to arbitration in accordance with this 40.4 and the arbitration laws for the time being in force in the Republic of South Africa. In this regard:

1.79.1 this 40.4 shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator;

1.79.2 the arbitrator shall, if the dispute is agreed in writing by the Parties to be -

- (i) primarily an engineering matter, an independent practising engineer of not less than ten years standing as such;
- (ii) primarily an accounting matter, be an independent practising accountant of not less than ten years' standing as such;
- (iii) primarily a legal matter, be an attorney of not less than ten years' standing as such or a practising senior counsel;
- (iv) any other matter, be a suitably qualified independent person;

agreed upon in writing by the Parties; provided that if the Parties do not, within three days after the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Chairman of AFSA or its successor-in-title upon request by either Party to make such appointment after the expiry of such three day period;

- 1.79.3 the arbitration shall be held at a venue in the Gauteng Province and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities or procedures, pleadings and/or discovery, or the strict rules of evidence;
- 1.79.4 the arbitrator shall have the power, inter alia, to -
- (i) investigate any matter, fact or thing which he considers necessary or desirable in connection with the dispute and, for that purpose, shall have the widest powers of investigating all the books, records, documents and other things in the possession or under the control of any Party, the right to take copies thereof and/or make extracts therefrom, the right to inspect goods and/or property of the Parties, and the right to have such books, records, documents, goods and/or property produced and/or delivered at any place reasonably required by him;
 - (ii) summon as a witness any person who may be able to give relevant evidence. Each Party undertakes to use reasonable endeavours to procure the attendance when summoned of any witness employed by it or otherwise under its control;
 - (iii) interview, question and cross-examine under oath any witness;
 - (iv) record evidence;
 - (v) make an award regarding the amount and responsibility for payment of legal fees and the arbitrator's remuneration;
 - (vi) call for the assistance of any other person who he may deem necessary to assist him in arriving at his decision;
 - (vii) make such temporary or final order or award (including a rule nisi, a declaratory order, an order for specific performance, an interdict and an award of damages or a penalty) as a High Court would be competent to make in the circumstances; and
 - (viii) exercise any additional powers which are conferred on him in terms of the Arbitration Act No 42 of 1965,
 - (ix) and to allow or cause any of the aforementioned things to be done;
- 1.79.5 the arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty days after it has been so demanded;
- 1.79.6 immediately after the arbitrator has been appointed, either Party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held;

- 1.79.7 any order or award that may be made by the arbitrator -
- (i) shall be final and binding;
 - (ii) shall be carried into effect; and
 - (iii) may be made an order of any competent court;
- 1.79.8 the hearing of the arbitration shall be held in camera. Save to the extent strictly necessary for the purposes of the arbitration or for any court proceedings related thereto, neither Party shall disclose or permit to be disclosed to any person any information concerning the arbitration or the award (including the existence of the arbitration and all process, communications, documents or evidence submitted or made available in connection therewith);
- 1.79.9 this 40.4 -
- (i) constitutes an irrevocable consent by the Parties to any proceedings in terms hereof; and
 - (ii) is severable from the other provisions of this agreement and shall remain in effect notwithstanding the termination or invalidity for any reason of this Agreement.

1.80 Jurisdiction

Subject to Clause 40 the Parties agree that the High Court of the Republic of South Africa shall have non-exclusive jurisdiction over any matter arising out of or in connection with this Agreement.

41. Termination of the Concession Contract

- 1.81 Upon termination of the Concession Contract the Agency shall assume the rights and obligations of the Concessionaire including but not limited to the right to terminate in terms of Clause 26.1.
- 1.82 If the Concession Contract is ceded and delegated to a Substituted Entity pursuant to Clause 20.7 of the Concession Contract, this Agreement shall on the same date be ceded and delegated to such Substituted Entity which shall then become the Concessionaire under this Agreement.

42. Miscellaneous Provisions

1.83 Specific Performance

The Independent Engineer shall have no right to seek an order for specific performance by the Agency or the Concessionaire of any of their respective obligations under this Agreement.

1.84 Confidentiality

Save as may be necessary in the performance of its duties under this Agreement or otherwise required by law, the Independent Engineer shall not at any time without the prior written consent of the Agency and the Concessionaire disclose to any person or otherwise make use of any of the documents or this Agreement or any of the Administered Contracts or other confidential information relating to the Project, the completed Project, the Agency or the Concessionaire. This provision shall cease to apply only to the extent that any matter has come into the public domain through no default on the part of the Independent Engineer or any person for whom it is responsible.

1.85 Variations in Writing

All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorised representatives of each of the Parties.

1.86 Entire Agreement

This Agreement represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements or arrangements, whether oral or written, between the Parties in connection with the Project.

1.87 Time and Indulgence

No waiver by any Party of any default by any other Party in the performance of any of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character, or shall be effective unless it is made in writing duly signed by such Party.

Any time or other indulgence allowed by one Party to any other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder.

1.88 Interest

Any Party in default of payment of any amount due hereunder to which Clause 30.2 does not apply shall pay interest on the outstanding payment at a rate of 2 per cent above the publicly quoted basic rate of interest (expressed as a per centum per annum, compounded monthly in arrears and calculated on a 365 day year) from time to time published by the Reference Bank (as defined in the Concession Contract) as being its prime overdraft rate, as certified by any manager of such bank. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

1.89 Severability

If any one or more of the provisions of this Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those provisions or parts thereof shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity, legality or enforceability of this Agreement. The Parties shall meet as soon as possible and negotiate in good faith a

replacement provision that is legally valid and that achieves as nearly as possible the objective of this Agreement and produces an equivalent economic effect.

CONTRACT N.003-041-2025/1
PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON
THE N3 TOLL ROAD CONCESSION CONTRACT

SCHEDULE 1

Conditions of Particular Application

C1.2.2 CONTRACT DATA: INFORMATION PROVIDED BY THE EMPLOYER

Clause No.	Requirement	Details
3.5	The minimum amount of work expressed as a percentage of the tendered contract value (incl VAT, excl provisional and PC sums) that will be undertaken by a Targeted Enterprise(s) selected by the Independent Engineer.	30%
13	The authorised and designated representative of the Agency is: The authorised and designated representative of the Concessionaire is:	LTBC TBC
16	Duration of Liability: Reckoned from:	6 years Conclusion of all the Services or the termination of this Agreement if earlier
17.1	Maximum Liability	
	- Independent Engineer's Liability:	R20 million, adjusted annually by the percentage change (if any) in the level of insurance effected under Clause 18.1.1 (on the basis of a maximum three claims)
	- Agency's Liability:	15% of that portion of the fee payable by the Agency in respect of the Basic Services
	- Concessionaire's Liability:	15% of that portion of the fee payable by the Concessionaire in respect of the Basic Services
18.1.1	Professional Indemnity Insurance:	This insurance will provide protection for the Concessionaire, and the Agency against liability by reason of error, omission or professional negligence in performance of its obligations under this Agreement.
	Amount of insurance required:	R20 million
18.1.2	Public liability / Third Party Insurance	This insurance will provide protection for the Concessionaire, and the Agency and all other parties to the extent required, with an

		invariable interest in the Project against public liability / third party claims.
	Amount of insurance required	R20 million
18.1.3	Motor vehicle liability	This insurance will provide protection for the Concessionaire, and the Agency for possible actions by the Independent Engineer.
	Amount of insurance required	Full Comprehensive cover
18.1.4	Compensation for Occupational Injuries or Diseases insurance	This insurance will provide protection for the Concessionaire, and the Agency and all other parties to the extent required, with an invariable interest in the Project against Occupational Injuries or Diseases claims.
	Amount of insurance required	Full Comprehensive cover
18.1.5	Common law liability insurance	This insurance will provide protection for the Concessionaire, and the Agency for the possible actions by the Independent Engineer.
	Amount of insurance required	R10 million
20.	Commencement of service:	As stated in Form of Acceptance
	Completion:	The later of either: <ul style="list-style-type: none"> - The date of the certification by the IE in terms of Clause 3.10 of the Concession Contract, or - 31 December 2029.
30.1	Time for Payment:	30 days
30.2	Interest:	Prime Interest rate
32.4	The penalty payable if Targeted Enterprises % is not met:	50% of the value by which the cumulative value of the payments to the Targeted Enterprise fails to meet the specified percentage.
34.	Language(s) of the Agreement Ruling Language	English
38.	Notices:	
	Agency's address:	SANRAL Head Office 48 Tambotie Avenue VAL DE GRACE, 0184
	Agency's telephone number:	012-8448000
	Concessionaire's address	N3TC Head Office 1st Floor Block D Southdowns Office Park 22 Karee Street IRENE 0157
	Concessionaire's telephone number:	087 2856382

C1.2.3 CONTRACT DATA: INFORMATION PROVIDED BY THE TENDERER

CONTRACT N.003-041-2025/1

PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON
THE N3 TOLL ROAD CONCESSION CONTRACT

A: CONTACT DETAIL

The Service Provider is

Address:

Telephone:

Facsimile:

The authorised and designated representative of the Service Provider ito clause 13, is the Project Coordinator, who is:

Name:

The **postal address** for receipt of communications is:

.....

Telephone:

Facsimile:

E-mail Address:

B: KEY PERSONS

Key Persons	Name	Indicate whether permanent or not permanent *
Project Coordinator (Independent Engineer)		
Deputy Project Coordinator (Deputy Independent Engineer)		

* Attach letter confirming permanent or contract employment/signed letter of consent.

C. SUB-CONTRACTING TO TARGETED ENTERPRISES (Refer to Form B7)

The amount of work expressed as a percentage of the Contract Price (including VAT, excluding provisional and prime cost sums), that will be undertaken by a Targeted Enterprise(s) selected by the Service Provider shall be%*.

* **Note to tenderer: insert percentage as tendered in Form B7.**

D: INFORMATION REQUIRED FOR THE PUBLICATION OF AWARD AS PER NATIONAL TREASURY NOTE

Name of Partners, Members or Directors	Appointment Date	Designation	Professional Registration Number

C1.2.4 SCHEDULE 2: BASIC SERVICES REQUIRED FROM THE IE

CONTRACT N.003-041-2025/1

PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON
THE N3 TOLL ROAD CONCESSION CONTRACT

REFER TO PART C3

A. Definition of Services

1. The Basic Services shall comprise:
 - 1.1 all the functions which are conferred on the Independent Engineer under or pursuant to the Administered Contracts including, without limitation, the functions referred to in this contract; and
 - 1.2 all other things or tasks that are reasonably necessary for the Independent Engineer to do to comply with its obligations under this Agreement and the obligations conferred on the Independent Engineer under or pursuant to the Administered Contracts.
2. For the avoidance of doubt:
 - 2.1 nothing in this contract is to limit the Independent Engineer's functions, duties, responsibilities and obligations conferred on the Independent Engineer under or pursuant to the Administered Contracts;
 - 2.2 the roles of the Engineer and the Independent Engineer are distinguished by their separate governing Agreements. The Engineer shall, inter alia, perform his/her duties in accordance with the professional responsibilities for design, documentation and construction supervision of the Administered contracts as set down in the Concession Contract; and
 - 2.3 the Independent Engineer shall perform his/her duties in accordance with the responsibilities and obligations conferred by the Concession Contract and in accordance with this Agreement.

B. Functions under the Concession Contract

The Independent Engineer's functions under the Concession Contract can be summarised as follows:-

3. Review of Design Documentation
 - 3.1 Review the proposed Administered Contracts for the design and construction of the Construction Works and for Operation and Maintenance of the Highway and make recommendations to the Agency and the Concessionaire for amendments which, in its opinion, should be made to the proposed Administered Contracts to avoid conflicts between those contracts and the Concession Contract.
 - 3.2 Audit the Preliminary Design for compliance with all the applicable standards and specifications specified in Annexure 1 to the Concession Contract applicable to the Preliminary Design and make recommendations to the Agency for approval by the Agency of the Preliminary Design..
 - 3.3 Audit the Detailed Design for compliance with all the applicable standards and specifications specified in Annexure 1 to the Concession Contract applicable to the Detailed Design and notify the Concessionaire and the Agency as to whether the Detailed Design complies with the standards specified in Annexure 1 and, if not, provide

- details of the non-compliance and suggest improvements to the Detailed Design to the Concessionaire and the Agency within 21 days of receipt of such Detailed Design.
- 3.4 Conduct a general overview of the programme for completion of the Detailed Design insofar as it relates to the obligations of the Agency and inform the Agency of those obligations.
 - 3.5 Monitor and from time to time conduct audits on site supervision conducted by the Engineer and the construction progress of the Administered Contracts and report to the Agency and Concessionaire on their compliance with the Concession Contract.
 4. Monitoring of Site Availability, Land Acquisitions and Permits
 - 4.1 Monitor obtain information from Contractors (as relevant) and report to the Agency and the Concessionaire on the status and progress of land acquisition by the Agency for the purpose of the Project and the permits applied for in relation to the Project.
 - 4.2 Monitor and report to the Agency and the Concessionaire and the Contractor on the compliance of the temporary traffic arrangements to be implemented whilst Construction Works are being constructed for compliance with the Agency's Requirements specified in Annexure 1 to the Concession Contract and report to the Agency, Concessionaire and the Contractor on any matter which may obstruct access to the Site and/or commencement of construction of the Construction Works.
 - 4.3 Monitor and report to the Agency and the Concessionaire on progress of removal of existing facilities, diversion of existing services and any other work which is necessary to enable construction on the Construction Works to proceed. Advise the Agency, and the Concessionaire of action required to avoid any delays to the commencement of any Construction Works.
 5. Review of Construction Programmes
 - 5.1 Audit the Additional Construction Works Programme (as and when it is prepared in accordance with the Concession Contract) for compliance with the completion requirements specified in the Agency's Requirements (if any) and the relevant Construction Contract and, if necessary, recommend to the Agency and the Concessionaire any amendments to the programmes which may be necessary to achieve the construction completion requirements.
 - 5.2 Monitor the progress of the Construction Works against the Additional Construction Works Programme and report to the Agency and the Concessionaire any variance from the relevant programme, promptly give written notice of the variance to the Agency and the Concessionaire.
 6. Control of Construction Quality (Audit function only)
 - 6.1 Audit compliance of the completed Construction Works with the Agency's Requirements.
 - 6.2 The Independent Engineer shall, at least twice annually and not less than twice during the contract period on each Administered Contract, audit the compliance of the Engineer's procedure and systems in terms of the Concession Contract and report to the Agency and the Concessionaire on all findings thereof.
 7. Extensions of Time/Compensation/Relief from Penalties/Relaxations/Determinations
 - 7.1 Make a determination as to an extension of any date or period, any monetary compensation or any relief from penalties as provided for in the Concession Contract.
 - 7.2 "Notwithstanding that extensions of time on Administered Contracts and their consequential effects on compensation or relief from penalties are the responsibilities of the Engineer appointed by the Concessionaire under the Second Concession Amending Agreement, the Independent Engineer shall, whenever requested by the

Agency or the Concessionaire, make his/her own determination and present such findings thereof in a written report.”

7.3 Make determinations in terms of:

- Amendments to Detailed Designs previously approved in terms of the Concession Contract;
- Variations to the Detailed Design which have a time and/or cost implication of more than 5% of the relevant contract value;
- Agency Variations as contemplated in clause 8.1.2 of the Concession Contract;
- Any other variation to relevant Works which has a time and/or cost implication of more than 5% of the relevant contract value;
- Any variation which may result in a relaxation of and/or noncompliance with the Agency’s Requirements;
- Any suspension of the Works required by the Agency”.

8. Completion Certificates and Requirements

8.1 The Independent Engineer shall ensure that any Taking-over Certificate, or Performance Certificate or Final Approval Certificate is correctly issued by the Engineer in terms of the Concession Contract Amending Agreements

8.2 Once delivered by the Engineer, the Independent Engineer shall audit all contract reports, as-built drawings and plans and other relevant data and documentation for compliance with the Agency’s Requirements.”

9. Occupational Health and Safety, Environmental and Social Requirements

9.1 Audit compliance with the Environmental Requirements of relevant Environmental Management Plans.

9.2 Audit annually compliance with the social obligations under Annexure 20 as set out in that Annexure.

9.3 Audit, when requested, and report on compliance with the OHS Act and Regulations.

10. Auditing of Operations and Maintenance

10.1 Conduct periodic audits and report at times reasonably determined by the Independent Engineer, of Operations and Routine Maintenance for compliance with the Agency’s Requirements (including where necessary verification through site visits).

10.2 Audit the Operation and Maintenance Manuals for compliance with Annexure 1.

10.3 Periodically review and report on the condition surveys of the roadside and toll plazas and any proposed remedial actions of the Concessionaire and arrange independent surveys, if necessary, to establish compliance with the performance specifications specified in the Agency’s Requirements.

10.4 Regularly audit the Traffic Event Logger (TEL) by comparing the results of the TEL with the automatic vehicle classifier at each toll plaza and report on the calibration and maintenance of TELs.

10.5 Audit the Operation and Maintenance management systems, the management information systems and procedures for compliance with Annexure 1.

11. Financial Control

- 11.1 Review the proposed cash flows of relevant Administered Contracts and provide comment on their compliance with the relevant Construction Contract.
- 11.2 Report on the Contractor's control of progress of Works and risks to completion within the time established in accordance with the relevant Construction Contract.
- 11.3 Review claims for additional payment and extensions of time in terms of the Administered Contracts.
- 11.4 Review the financial model annually and report thereon to the Agency and the Concessionaire within 60 days of the commencement of the review. The Independent Engineer may, with the approval of the Concessionaire and the Agency, employ the services of competent financial and engineering consultants to assist with the review and reporting processes.

PART C2 Pricing Data

TABLE OF CONTENTS	PAGE
C2.1 PRICING INSTRUCTIONS	C-49
C2.1.1 Meanings	C-49
C2.1.2 Quantities	C-49
C2.1.3 Rates Inclusive	C-49
C2.1.4 Rates Only	C-49
C2.1.5 Descriptions	C-50
C2.1.6 Escalation	C-50
C2.1.7 Interim Payments	C-50
C2.1.8 Provisional and Prime Cost Sums	C-50
C2.1.9 Discrepancies	C-51
C2.1.10 Non-Responsive	C-51
C2.1.11 Currency	C-51
C2.1.12 Item Numbers	C-51
C2.2 PRICING SCHEDULE.....	C-52
C2.3 BREAKDOWN OF PRICING SCHEDULE ITEM 1 (TABLE 1)	C-53
C2.3 BREAKDOWN OF PRICING SCHEDULE ITEM 1 (TABLE 2)	C-56

C2.1 PRICING INSTRUCTIONS

C2.1.1 Meanings

For the purposes of this Pricing Schedule, the following words shall have the meanings hereby assigned to them.

- Unit:** The unit of measurement for each item of work as defined in the Scope of Works.
- Quantity:** The number of units of work for each item as provided by the Employer or as tendered by the Service Provider.
- Rate:** The payment per unit of work for which a rate has been provided by the Employer or for which the Service Provider tenders to do the work.
- Amount:** The product of the quantity and the rate tendered for an item.
- Lump Sum:** An amount tendered for an item, the extent of which is described in the Pricing Schedule, the Scope of Work or elsewhere, but of which the quantity of work is not measured in units.
- Provisional Sum:** An amount allowed for in the Pricing Schedule, for which the quantity of work is not known.
- Prime Cost:** Is a specific type of Provisional Sum where payment is made on the production of invoices showing the cost price of the implementation or installation of the service required. Services rendered in this manner carry a cost for which a rate or a lump sum is offered at tender stage to cover all the tenderer's handling, supervision and liability costs in providing the item or services.

C2.1.2 Quantities

The quantities provided by the Employer in the Pricing Schedule are only approximate quantities. The quantities of work finally accepted and certified for payment, and not the quantities given in the Pricing Schedule, will be used to determine payments to the Service Provider.

The validity of the Contract shall in no way be affected by differences between the quantities in the Pricing Schedule and the quantities finally certified for payment. Work is valued at the rates or lump sums tendered.

C2.1.3 Rates Inclusive

Rates and lump sums shall include full compensation for overheads, profits, incidentals, tax (other than VAT), etc., and for the completed items of work as specified in the Scope of Works and Contract Data and for all the risks, obligations and responsibilities specified in the General Conditions of Contract, Particular or Special Conditions of Contract, except in so far as the quantities given in the Pricing Schedule are only approximate.

C2.1.4 Rates Only

The tenderer shall fill in a quantity or a rate or a lump sum for each item where provision is made. Items against which no rate or lump sum has been entered in the tender will not be paid for when the work is executed, as payment for such work will be regarded as being covered by other rates or lump sums in the pricing schedule.

The tenderer shall fill in a rate against all items where the words “rate only” appears in the amount column. Although no work is foreseen under such item and no quantities are consequently given in the quantity column, the tendered rate shall apply should work under this item actually be required. Tenders should note the provisions of clause C2.1.10 of this preamble.

The tendered lump sums and rates shall be valid irrespective of any change in the quantities during the execution of the contract.

C2.1.5 Descriptions

The short descriptions of the payment items in the Pricing Schedule are only given to identify the items and to provide specific details. Reference shall, *inter alia*, be made to the Contract Data, General Conditions of Contract and Particular/Special Conditions of Contract and Scope of Works for more detailed information regarding the extent of work entailed under each item.

C2.1.6 Escalation

Where so indicated under measurement and payment, prices or rates will be subject to adjustment for escalation as provided for below:

- i) The prices or rates shall be fixed for the first 12-month period determined from the tender base date and no change during this period will be allowed for escalation.
- ii) On the 12-month anniversary date of the Contract base date the rates or sums shall be adjusted by the 12-month year on year CPI index (as published in the monthly bulletin PO141. of Statistics South Africa under table B) and fixed at this value for the following 12-month period. Subsequent 12-month periods shall be dealt with on the same basis.
- iii) Adjustment of lump sum prices for escalation shall only be applicable to that portion of the relevant Service which is incomplete at the end of the 12-month anniversary date and shall not be applicable to any progress payments already claimed.

Adjustment for escalation shall only be applicable for services or portions thereof, that are still within the prescribed programme and any approved extensions of time.

C2.1.7 Interim Payments

Interim payments for lump sum payment items may be permitted. Such interim payments shall however be limited to proven progress achieved for that particular service deliverable. The sum of any progress payments made under a particular lump sum payment item shall be deducted prior to calculating any adjustments for escalation as described in clause C2.1.6 above.

C2.1.8 Provisional and Prime Cost Sums

Each Sum shall only be used, in whole or in part, in accordance with the Employer's instructions and the Contract Price shall be adjusted accordingly. The total sum paid to the Service Provider shall include only such amounts, for the work, supplies or services to which the Sum relates, as the Employer shall have instructed.

For each Sum, the Employer may instruct plant, materials or services to be procured by the Service Provider in accordance with the Employer's policies, and for which there shall be included in the Contract Price:

- The actual amounts paid (or due to be paid) by the Service Provider under the Sum, and

- An item for compilation and printing of procurement documentation, quotation/tender process and evaluation, and all overhead charges and profit, tendered in the Pricing Schedule. Provided that for Prime Cost Sums only, where a percentage mark-up or lump sum mark-up is tendered, which shall exclude profit.

The Service Provider shall produce all quotations, invoices, vouchers and accounts or receipts in substantiation of any claim under a Sum.

Any percentage adjustment or lump sum mark-up against the Sum for handling fee, profits, etc. shall not be negative.

C2.1.9 Discrepancies

Subject to the conditions stated in C2.1.10 below, the rates and lump sums filled in by the tenderer in the pricing schedule shall be final and binding with regard to submitting the tender, and may not be adjusted should there be any mistakes in the extensions thereof and in the total sums appearing in the tender. Should there be any discrepancies between the tender sum and the correctly extended and totalled pricing schedule, the rates and the lump sums will be regarded as being correct, and the Employer shall have the right to make adjustments to the tender sum to reconcile the tender sum with the total of the pricing schedule. In such an event the tenderer will be consulted but, failing agreement between the parties, the decision of the Employer shall be final and binding. Adjustment of the tender sum will take place prior to the signing of the contract. In their own interest tenderers must make doubly sure of the correctness of their tendered rates and lump sums, the extensions and the tender sum.

C2.1.10 Non-Responsive

A tender may be deemed non-responsive if the unit rates or lump sums for some of the items in the Pricing Schedule are, in the opinion of the Employer, unreasonable or out of proportion, and if the tenderer fails, within a period of seven (7) days of having been notified in writing by the Employer to adjust the unit rates or lump sums for such items, to make such adjustments.

C2.1.11 Currency

All rates and sums of money quoted in the Pricing Schedule shall be in South African Rand and whole cents

C2.1.12 Item Numbers

The item numbers appearing in the Pricing Schedule do not refer to any corresponding item numbers in the Scope of Work and are clarified in the Scope of Work under C3.7.

C2.2 PRICING SCHEDULE

CONTRACT N.003-041-2025/1

PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

Item	Description	Unit	Rate	Quantity	Amount
1	IE responsibilities related to Toll Concession Contract Requirements - Monthly Lump Sum	Month		52*	
2	Additional Services	Prov.Sum			R8 000 000
3	Specialist Services and Exceptional Services	Prov Sum			R8 000 000
4	IE Responsibilities of certification for Transfer as per Clause 3.10 of the Concession Contract	Prov. Sum			R 4 000 000
5	Handover from previous to new IE	Prov. Sum			R1 000 000
6	Subtotal				
7	VAT	%	15%		
8	Total Tendered Amount carried forward to Form of Offer				

*Note for Item 1.: It should be noted that the 52 months represents the duration of the Normal (Basic) Services that expires 2 months after the end of the Concession Period namely 1 November 2029 plus 2 months (31 December 2029).

Note for Item 4: The Completion of this Contract shall be the date on which the Independent Engineer has certified the Works in terms of Clause 3.10 of the Concession Contract. The Independent Engineer shall not unreasonably withhold the Clause 3.10 certification. Measurement and payment for the IE responsibility in terms of Clause 3.10 of the Concession Contract shall be made under Item 4 above and shall not be included in Item 1

SIGNED BY TENDERER:

C2.3 BREAKDOWN OF PRICING SCHEDULE ITEM 1 (TABLE 1)

ID	Deliverable	Frequency	Project Co-ordinator (PC) Hours per activity per annum	Deputy PC Hours per activity per annum	Expert 1 Hours per activity per annum	Expert 2 Hours per activity per annum	Expert (n) Hours per activity per annum	Total
1.	Review Plaza Manager's Report <i>(including "Complaints registered by Users")</i>	Month						
2.	Review Incident Management System (IMS) Report	Annual						
3.	Review Traffic Management System (TMS) Report and conformance to Annexure 1	Annual						
4.	Review TEL vs MIS Audit Reports	Bi-annual						
5.	Review Overload Management Report	Annual						
6.	Review Operations and Maintenance Reports and Audit its conformance to Annexure 1	Quarterly						
7.	Review Bridge Management System Principal Inspection Report	Every 5-years Next (last) in 2025						
8.	Review Bridge Management System (BMS) Update Report and conformance to Annexure 1	Annual						
9.	Review Pavement Management System (PMS) Report and conformance to Annexure 1	Annual						
10.	Review Report on Cuts & Fills (Geotechnical) and conformance to Annexure 1	Annual						
11.	Review Training Report and conformance to Annexure 20	Annual						
12.	Review 36 month Additional Construction Works Program (3 year rolling program as per Schedule 2 cl.5.1 & Part C3 cl.C3.4.3)	Annual						
13.	Review on Financial Monitoring (Part C3 cl.C3.4.8)	Annual						

14.	Review Environmental Management Report and conformance to Annexure 2	Annual						
15.	EMS – Environmental Management System External Review and on-site Audit and meeting (schedule 2 cl. 9.1, & Part C3 cl. C3.4.9) (3 x consecutive days)	Annual						
16.	Review, of Design and Construction Documentation (schedule 2 cl.3 & Part C3 cl.C3.4.4) (According to the indicative program in Table 2)	Refer to C2.3 Table 2						
17.	Review of Construction Program of Administered contracts (schedule 2 cl. 5.2) (According to the indicative program in Table 2)	Refer to C2.3 Table 2						
18.	Review of Construction Quality (schedule 2 cl. 3.5, 4.2, 6, 11.1 & 11.2) (According to the indicative program in C2.3 Table 2)	Refer to C2.3 Table 2						
19.	Review of Extensions of Time/Compensation/Relief from Penalties/Relaxations/Determinations. (schedule 2 cl. 7.1 & 7.3) (v According to the indicative program in C2.3 Table 2)	Refer to C2.3 Table 2 (report at quarterly meetings)						
20.	Completion certificates and requirements. (schedule 2 cl. 8) (According to the indicative program in C2.3 Table 2)	Refer to C2.3 Table 2						
21.	Social obligations (schedule 2 cl. 9.2 & Part C3 cl. C3.4.10) (3 x consecutive days)	Annual						
22.	Auditing of Routine Maintenance (schedule 2 cl. 10.1 & Part C3 cl. C3.4.5) (2 x consecutive days)	4 No per year						
23.	Auditing of Toll Operations and Plaza maintenance (schedule 2 cl. 10.1 , 10.3 & Part C3 cl. C3.4.6)	4 No per year						
24.	Traffic forecast review for Financial control (schedule 2 cl. 11.4)	Annual						
25.	Review of claims for Administered contracts (schedule 2 cl 11.3)	Additional Duties						
26.	Traffic Management, Overload and IMS (schedule 2 cl..10.4 & Part C3 cl. C3.4.7)	As per spec						
27.	Concession meetings (Part C3 cl. C3.4.2 & cl. C3.4.12) (full day in Gauteng)	4 No per year						

28.	Traffic Management and Overload meetings (Part C3 cl. C3.4.2) (half day in Gauteng)	4 No per year						
29.	Routine Road Maintenance meetings (Part C3 cl. C3.4.2) (full day in Harrismith)	4 No per year						
30.	Toll Operations meetings (Part C3 cl. C3.4.2) (full day alternating plazas)	4 No per year						
31.	Annual expansion meeting (Part C3 cl. C3.4.2) (full day in Gauteng and full day inspection)	Annual						
32.	Design meetings (Part C3 cl. C3.4.2) (in Gauteng)	5 days per year						
33.	Preparation for meetings and audits	Per meeting and audit						
Input rate per hour per key staff and expert								
Hours per annum per key staff and expert (Sum hours)								
Amount per annum per key staff and expert (Input rate x hours)								
	Subtotal Normal Services						(a)	
	Add administrative duties per annum						(b)	
	Add disbursements per annum						(c)	
	Total Amount per annum for Normal Services						(d) = (a+b+c)	
	Monthly rate for Item 1 for IE responsibilities related to Toll Concession Contract Requirements – Monthly Lump Sum						(d)/12	

C2.3 BREAKDOWN OF PRICING SCHEDULE ITEM 1 (TABLE 2)

PROJECTS FOR REPAIR, REHABILITATION DESIGN						
PROJECT INFORMATION						
Package	Highway Sections	Detailed Design		Tender	Construction	
		Commencement Date	Submission Date to IE for Approval	Tender Phase	Commencement Date	Estimated Duration
						(months)
1	HS9A NB	01-Jul-23	31 Jul-24	01-Jun-24	01-Sep-24	30
	HS9A SB					
	HS10					
	HS11					
2.1	HS2B1	01-Jan-24	30-Nov-24	01-Oct-24	01-Jan-25	30
	HS2B2+3					
2.2	HS4	01-Jan-25	31-May-26	01-Apr-26	01-Jun-26	30
3	HS12XB	01-Jul-24	30-Nov-25	01-Oct-25	01-Jan-26	24
	HS13X					

	HS14XA					
	HS14XB					
4	HS12XA	01-Jan-24	30-Nov-25	01-Oct-25	01-Jan-26	24
5	HS5A	01-Jan-25	31-May-26	01-Apr-26	01-Jul-26	30
	HS5B					
	HS5C					
6	HS1	01-Jan-26	30-Nov-26	01-Oct-26	01-Jan-27	24
	HS2A					
7 ⁽¹⁾	HS8	01-Jan-26	30-Nov-26	01-Oct-26	01-Jan-27	24
8 ⁽¹⁾	HS9B NB	01-Jan-27	30-Nov-27	01-Oct-27	01-Jan-28	12
Note. (1).						
These projects are subject to ongoing performance assessment of recent rehabilitation with respect to hand-back.						

SIGNED BY TENDERER:

PART C3 SCOPE OF WORK

TABLE OF CONTENTS	PAGE
C3.1 PROJECT OBJECTIVES.....	C-60
C3.2 BACKGROUND	C-60
C3.3 LOCATION OF THE PROJECT.....	C-60
C3.4 NORMAL SERVICES	C-61
C3.4.1 Administration of contracts	C-61
C3.4.2 Meetings	C-61
C3.4.3 Expansion Programme	C-61
C3.4.4 Designs and Construction.....	C-62
C3.4.5 Maintenance Works and Operations	C-62
C3.4.6 Toll Plaza Operations	C-63
C3.4.7 Traffic Management, Overload Management and Incident Management	C-64
C3.4.8 Financial Monitoring.....	C-65
C3.4.9 Environmental Monitoring	C-65
C3.4.10 Social and Community Issues	C-65
C3.4.11 Safety	C-65
C3.4.12 Contractual Requirements	C-65
C3.4.13 Reporting	C-65
C3.4.14 Correspondence	C-66
C3.4.15 Additional Services	C-66
C3.5 ADDITIONAL SERVICES – TRANSFER.....	C-66
C3.6 SPECIALIST SERVICES	C-67
C3.7 MEASUREMENT AND PAYMENT	C-67
C3.7.1 Normal Services – Concession Agreement Responsibilities.....	C-67
C3.7.2 Additional Services	C-67
C3.7.3 Specialist Services and Exceptional Services	C-67
C3.7.4 IE Responsibilities of certification for Transfer as per Clause 3.10 of the Concession Contract	C-68
C3.7.5 Handover from Previous to New IE	C-68
C3.8 PERSONNEL REQUIREMENTS	C-68
C3.9 DUTIES OF KEY STAFF	C-69
C3.9.1 Project Coordinator	C-69

**CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE
INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT**

C3.9.2	Primary Duties Related to CC Administration.....	C-69
C3.9.3	Co-ordination and Supervision	C-70
C3.9.4	Reports	C-70
C3.9.5	Meetings	C-70
C3.9.6	Transfer (Hand Back)	C-70
C3.9.7	Delegation.....	C-70
C3.9.8	Deputy Project Coordinators (DPC)	C-70
C3.9.9	Primary Duties and Responsibilities	C-71
C3.9.10	Meetings	C-71

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.1 PROJECT OBJECTIVES

The primary objective of the project is to administer the Concession Contract (CC) on the N3 Toll Road in order to assist in ensuring the success of the project.

Secondary objectives involve:

- i) Ensuring that all the requirements of the CC are met at all times in accordance with the CC and its Annexures.
- ii) Obtaining independent, good quality engineering advice and recommendations on issues related to the CC and in all areas where the Independent Engineer (IE) has a role to play in terms of the CC and its Annexures, to the ultimate benefit of road users.

C3.2 BACKGROUND

The N3 Toll Road Concession Contract was awarded to N3TC for 30 years in 1999 by the South African National Roads Agency SOC (Limited) (SANRAL) hereinafter called "THE AGENCY",.

Since then, the toll road has been operating satisfactorily and the Concession is on schedule to complete as initially planned. Since commencement of the concession a number of variations have been approved.

The current IE contract is up for renewal from 16 October 2025 and this contract is to perform the IE duties for the duration of the Concession Contract.

The IE duties are primarily required to ensure that the Client's technical requirements continue to be met and to administer the Concession Contract in terms of operations and maintenance as well as expansions.

The Concession Period expires on 1 November 2029 and the IE, as part of the duties, will be required to certify that the Concessionaire has fulfilled the obligations in terms of Clause 3.10 of the Concession Contract to transfer the Highway to the Agency.

The IE is to act fairly and impartially at all times in its assessments and recommendations.

C3.3 LOCATION OF THE PROJECT

The proposed project is located on National Road N3 between Cedara in Kwazulu Natal (N3-4 km 1,6) and Heidelberg in Gauteng (N3-11 km 15.1) over a distance of 415.2 km.

N3TC's Head Office is based in Irene, Gauteng. The Head Office functions include Toll Operations, Financial Management, Traffic and Incident Management and Engineering Operations including Project Management. The Routine Maintenance Operations and Route Control Centre is based in the Regional Office in Harrismith, Free State.

The SANRAL's Head Office is based in Val De Grace, Gauteng and the SANRAL's Eastern Region is based in Pietermaritzburg, Kwa-Zulu Natal.

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.4 NORMAL SERVICES

These services are to be provided and paid for as monthly amounts listed in C2.2. Normal services includes the Basic Services referred to in Part C1.2.4: Schedule 2 of this Contract and as contemplated in the Concession Contract.

C3.4.1 Administration of contracts

The Normal Services shall include everything necessary or reasonably implied as necessary for the administration and implementation of the Administered Contracts as the Independent Engineer (IE) in terms of those agreements. Such services shall include but not be limited to:

- i) Carry out the functions of the Independent Engineer under the Administered Contracts.
- ii) Review and approve as necessary, on behalf of the Client, compliance of all detail designs, drawings, workmanship, operation and maintenance in accordance with the Administered Contracts.
- iii) Report to the Client as provided for in the Administered Contracts in respect of quality, progress, adherence to requirements and cost as requested by the Client.
- iv) The services detailed below, and including the detailed duties and allocation of duties set out in Schedule 2 of this Agreement shall be included without detracting from the generality of foregoing.

C3.4.2 Meetings

The typically expected number of meetings are as follows:

- i) Quarterly Concession Contract Meetings (Gauteng)
- ii) 4 x Routine Maintenance meetings per year (Harrismith)
- iii) 4 x Toll Operations meetings per year (Toll plazas)
- iv) 4 x Traffic Management & Overload meetings per year (Gauteng)
- v) 1 x Annual compliance and expansion meeting (Gauteng) per year followed by a 1 x day inspection of the route.
- vi) 1 x Environmental Inspections and Meetings per year (on-site).
- vii) Design Meetings – as and when required, refer to the indicative schedule of work contained in Part C2.3 Table 2 (Gauteng).
- viii) Site meetings per Administered contract per year, refer to the indicative schedule of work contained in Part C2.3 Table 2 (on-site).

C3.4.3 Expansion Programme

The Independent Engineer shall monitor the annual review of Expansion Programme (Additional Works Program) by the Employer in terms of Annexure 1 of the Concession Contract and assess likely conformance with the Agency's Requirements and the Concession Contract and comment as appropriate.

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.4.4 Designs and Construction

N3TC will implement the Additional Works Program on various sections using a conventional FIDIC, Employers Design, approach of appointing a Consulting Firm to design and supervise a contractor who in turn will be contracted on an arms length tendered basis. N3TC procures construction contracts on the basis of Defects Notification Period's ranging from 1 to 4 years.

The Independent Engineer's input on this work will include:

- i) Facilitating the Preliminary Design ("PD") approval process by the Agency through, for example, attendance of design meetings as well as arranging for design reviews as required and facilitating that the Agency approves within the required time period.
- ii) Review of Detailed Designs ("DD") for conformance with specifications, requirements and the approved PD and approval of the DD.
- iii) Procuring specialist inputs if requested, for the review of designs and other specialist services.
- iv) Technical Audits during the construction phase to confirm conformance with specification, the Agency's Requirements and the Additional Works Program.
- v) Monitoring the completion handover (Taking-Over-Certificate) and audit the monitoring of the performance of the Works during the defects liability period up to issuing the Performance Certificate. The actual acceptance and issuing of the certificates in terms of the Concession Contract is the responsibility of N3TC and their appointed Engineer.
- vi) Maintaining for the duration of the Service, as the main repository, all documentation relating to the Administered Contracts. All documentation including As-built Drawings shall be submitted to the IE in electronic form for retention. N3TC shall also retain a set of documents. On expiry of this Agreement or on Termination, the IE shall hand all documentation over to SANRAL.

C3.4.5 Maintenance Works and Operations

N3TC will execute maintenance and repairs with Routine Road Maintenance Contracts by SMME's . The duration of the contracts are normally 3 years with an option to extend. The current contracts expire in 2024. N3TC will follow an arm's length procurement process for RRM Contracts to commence in 2025. The Independent Engineer shall audit and monitor the execution of the works in order to ensure conformance with Annexure 1 of the Concession Contract and will comment on any matters requiring attention.

This will include:

- i) Ensuring that all reports specified in the Concession Contract and Annexures are submitted and according to specified programme.
- ii) Review of periodic reports
 - Quarterly incident and maintenance reports.
 - Evaluate landowners' requests on referral by the Agency and/or N3TC.
- iii) Monitor maintenance work in terms of the requirements of Annexure 1.
- iv) Monitor the application of

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

- Pavement Management System
- Bridge Management System
- Geotechnical Management Plan. (Cut & fill Slopes)
- v) Attend quarterly maintenance meetings with N3TC and SANRAL.
- vi) Make comments on any matters requiring attention.

C3.4.6 Toll Plaza Operations

The Independent Engineer shall audit the monitoring of toll plaza operations and traffic management and trends to ensure compliance with the Concession Contract. This will include:

- i) Review the plaza monthly operations reports.
- ii) Attend Operations Meetings at Plazas on a rotational basis four times a year.
- iii) Monitor traffic and income trends.
- iv) Monitor the application of the Incident Management System
- v) Arrange inspections of operations with N3TC and its operator when required.
- vi) Fixed and Semi-fixed Asset review
- vii) General maintenance audits
- viii) Queue length and average Service time audits

The Toll Audit System is comprised of the following components:

- Scenivision Toll Collection System
- Scenivision Automatic Vehicle Classification System
 - Post classification system is implemented.
 - Incidents are generated and verified in near real time.
- Scenivision Management Information System
 - Incident Monitoring is conducted in the Control Room on a near real time basis.
 - Video Toll Audit System [VTAS] integration provides access to real time video for incident verification.
 - Queue length monitoring.
- Video Toll Audit System
 - 4 cameras in each lane.
 - Real time Automatic Number Plate Recognition [ANPR] for transactions verification.
 - Real time video integration into Management Information System [MIS] Incident Control.
 - Post event Incident monitoring.
 - Post event Queue length Auditing.
- Audit TELs

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

Internal Audits are performed by the Operator. N3TC employs an external audit team who perform monthly verification of the Operator's audits, as well as 2 annual compliance audits.

Additionally, N3TC conduct a Quality Assurance Review to test the maturity of the Operator's Internal Audit function.

C3.4.7 Traffic Management, Overload Management and Incident Management

- i) Auditing of Traffic Event Loggers [TELS] Results – Two audit reports p.a. to coincide with the Contract Meetings. Data is provided by N3TC from its Management Information System [MIS] and SANRAL [TELS]. This audit is linked to the toll plaza AVC audit report
- ii) Audit of and comment on the TMS and OMS Annual Reports – Once p.a
- iii) Attendance of and comment on the TMS & OMS Service Provider Contract Meetings – 4 meetings p.a. Takes place at the N3TC office in Gauteng
- iv) Attendance and inspection of the HSWIM Quality Assurance – 1 Site Visit p.a. [2-day duration]
- v) Audit of and comment on the Annual Toll Tariff Revision - Once p.a. at the end of November of the year preceding the increase date
- vi) IMS Annual Report – Comment on and Audit of the IMS Annual Report. Once p.a

The Incident Management System (which includes Route Services) includes the following:

- Head Office Management – Traffic Engineering
- Route Incident Management Services [RIMS] Manager and Co-ordinator
- Route Services [Out sourced to Contractor] responsible for:
 - Continuous improvement of the Incident Management Services along the N3 Toll Route
 - Capturing, collating, interpretation and dissemination of accurate and reliable incident data
 - Minimisation of road/lane closures and times and the potential for secondary crashes.
 - Improvement of Safety, Convenience and Mobility along the N3Toll Route
 - Provide a 24 hour patrol service
- Route Control Centre [RCC] based in Harrismith
- Incident Reporting Information System database [IRIS] managed by the RCC
- Variable Message Signage sub-system – operated and managed by the RCC
- CCTV sub-system managed and operated by the RCC

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.4.8 Financial Monitoring

The Independent Engineer shall audit the monitoring of the financial situation of the Concession to ensure compliance with the Concession Contract. This will include:

- i) Review annual financial statements when requested
- ii) Review the expansion programme and Additional Works Program in terms of the requirements of Annexure 1 of the Concession Contract
- iii) Monitor annual renewal of N3TC's insurance cover in terms of the Contract
- iv) Monitor and comment on the annual increase of toll tariffs.
- v) Comment on any matters requiring attention

C3.4.9 Environmental Monitoring

The Independent Engineer shall audit the monitoring of Environmental Management Plan (EMP) for the Project to ensure compliance with the Concession Contract. This will include:

- i) Conduct an annual environment audit and report with respect to conformance with Annexure 2 of the Concession Contract.
- ii) Comment on any matters requiring attention.

C3.4.10 Social and Community Issues

The Independent Engineer shall audit that the Concessionaire is complying with the requirements of Annexure 20 of the Concession Contract.

C3.4.11 Safety

Audit internal and external safety audits when requested and comment on any trends or problems.

C3.4.12 Contractual Requirements

Arrange quarterly contractual meetings between The Agency and N3TC to review and discuss contractual obligations and requirements.

Receive and process in terms of the Concession Contract any claims between the two parties.

Review the Concessionaire's request for variations to the Contract, advise the Agency and issue Change Orders where necessary.

In terms of the Concession Contract, make recommendations for the application of penalties in terms of the Concession Contract for, say, unacceptably long queue lengths, late grass cutting, defaults etc.

C3.4.13 Reporting

The Independent Engineer shall produce an annual IE report or as necessary, to the Agency and N3TC on the results of all audits and reviews.

The Independent Engineer shall also monitor and review the following reports and provide comments and recommendations as appropriate:

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

Table 3-1: Indicative List of Reports to be Reviewed

ID	Deliverable	Frequency
1.	Plaza Manager's Report (<i>including "Complaints registered by Users"</i>)	Month
2.	Incident Management System (IMS) Report	Annual
3.	Traffic Management System (TMS) Report	Annual
4.	TEL vs MIS Audit Report	Bi-annual
5.	Overload Management Report	Annual
6.	Operations and Maintenance Report	Quarter
7.	Bridge Management System Principal Inspection Report	Every 5-years Next (last) 2025
8.	Bridge Management System (BMS) Update Report	Annual
9.	Pavement Management System (PMS) Report	Annual
10.	Report on Cuts & Fills (Geotechnical)	Annual
11.	Training Report	Annual
12.	36-month Additional Construction Works Program Review (3 year rolling program)	Annual
13.	Report on Financial statements	Annual
14.	Environmental Management Report	Annual
15.	EMS – Environmental Management System External Review and Audit *	Annual
16.	Review, of Design and Construction Documentation (schedule 2 cl.3 & Part C3 cl.C3.4.4) (According to the indicative program in C2.3 Table 2)	Refer to C2.3 Table 2
17.	Review of Construction Program of Administered contracts (According to the indicative program in C2.3 Table 2)	Refer to C2.3 Table 2 (report at quarterly meetings)

* NOTE all EMP individual issues (Compliance, Heritage, Noise, Vegetation, Water) are dealt with collectively in EMS

C3.4.14 Correspondence

Unless agreed otherwise by the Agency and N3TC, all correspondence between The Agency and N3TC will be routed via the Independent Engineer to forward to the other party, in order to be kept abreast of issues and comment as appropriate.

C3.4.15 Additional Services

Additional Services shall include any additional engineering service not included under Normal Services, reasonably required by The Agency and/or the Concessionaire and the Independent Engineer. This includes supporting services required from the previous IE for transition and project familiarisation.

C3.5 ADDITIONAL SERVICES – TRANSFER

The IE attendance to the Transfer (Hand Back) period of audit and certification shall not be included under Normal Services. A Provisional Sum has been provided separately for this purpose. The Agency and/or the Concessionaire and the

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

Independent Engineer shall agree on a program for the audit and certification process, and agree on a time cost measurement schedule. Once agreed, this will be approved as a final sum which shall be divided and paid monthly over the period agreed.

C3.6 SPECIALIST SERVICES

Specialist Services shall include any additional specialist service or expert advice, legal, financial or otherwise, not included under Normal Services, reasonably required by the Implementing Authority and/or the Concessionaire and the Independent Engineer.

C3.7 MEASUREMENT AND PAYMENT

The basis for determining remuneration shall be based as follows:

C3.7.1 Normal Services – Concession Agreement Responsibilities

Item 1: The unit of measurement for normal/basic services (Concession Contract) is the number of months that these services are provided.

The tendered monthly rate for the IE services shall include all the remuneration of the Project Coordinator (Independent Engineer) and Deputy Project Coordinator (Deputy Independent Engineer) as well as all support and specialist staff and all related travel and accommodation disbursements.

Contract price adjustment shall be applicable in accordance with Clause C2.1.6.

It should be noted that the 52 months represents the duration of the normal/basic service required until the expiry of the Concession Contract plus 2 months. Namely 1 November 2029 plus 2 months – 31 December 2029.

C3.7.2 Additional Services

Item 2: Additional services will be paid on a time and cost basis in accordance with the input rate per hour provided in C2.3 of Part C2.

These hourly rates are deemed to include full compensation for all work related to the provision of additional duties extra-over the normal duties as specified and as ordered by the Employer.

The provisional sum shall be paid for in accordance with Clause C2.1.8.

C3.7.3 Specialist Services and Exceptional Services

Item 3: Special Services and Exceptional Services will be paid for on an agreed quotation basis.

The provisional sum shall be paid for in accordance with Clause C2.1.8.

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.7.4 IE Responsibilities of certification for Transfer as per Clause 3.10 of the Concession Contract

Item 4: Measurement and payment for the IE responsibility in terms of Clause 3.10 of the Concession Contract shall be made under Item 4 above and shall not be included in Item 1.

The duties under this item will be paid on a time and cost basis in accordance with the input rate per hour provided in C2.3 of Part C2.

The provisional sum shall be paid for in accordance with Clause C2.1.8.

C3.7.5 Handover from Previous to New IE

Item 5: Payments will be made via the new IE appointment to the previous IE for the handover of IE tasks from the previous to new IE, as and when required. This will be compensated for on a time and cost basis as agreed with the Employer. The handover period shall not extend beyond 1 month after the appointment of the new IE.

The provisional sum shall be paid for in accordance with Clause C2.1.8.

C3.8 PERSONNEL REQUIREMENTS

The Service Provider's key persons become a contractual commitment upon award. However, the Employer recognises that key persons may for some or other reason not be available for the full duration of the project and any changes to those listed are, to all intents and purposes, a change or variation to the contract. Any proposed change should be handled formally by way of written request and approval but does not require a Works Authorisation to be submitted. Replacement personnel shall be of same or better competence and experience as those initially accepted. Re-evaluation by the Employer of any replacement key persons shall be paid for by the Service Provider as specified in Section 3.8 unless the circumstances dictating the change are completely outside of the Service Provider's control.

The minimum qualifications and requirements for the service and sub-service provider's personnel shall be as indicated in the table below. (refer to evaluation criteria)

Position	Minimum Qualification/R registration	Minimum Relevant Experience (years) ²	Other Requirements
Project Coordinator (Independent Engineer)	Pr Eng ¹	20	Experience in Road Geometric Design and Capacity determinations and projections, Pavement and Rehabilitation Design, Roadbuilding Materials and Road and Bridges Contract Administration and dispute resolution. Experience related to the administration of Concession Contracts and the administration of performance based contracts will be considered in the evaluation.

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

			The Project Coordinator (Independent Engineer) will be the Representative of the Independent Engineer (its clause 13 of the Conditions of Contract).
Deputy Project Coordinator (Deputy Independent Engineer)	Pr Eng or Pr Tech Eng ¹	10	

- ¹ Registered with Engineering Council of South Africa (ECSA) or any other international body recognised by ECSA, i.e. Washington Accord, Dublin Accord and Sydney Accord.
- ² Relevant experience is the actual number of years, measured from the date of acquiring the base qualification, worked in the field of the specified position.

C3.9 DUTIES OF KEY STAFF

C3.9.1 Project Coordinator

The Project Coordinator (PC) is the designated Independent Engineer in the Concession Contract and its Annexures and must fulfil the roles assigned to him in an independent manner to ensure that all parties comply with their obligations. The PC shall act pro-actively in carrying out these duties and engage the Parties as appropriate.

It is envisaged that the PC will be involved for a minimum of 60% of his time for the first month and a minimum of 40% of his time for the following 2 months of this appointment in order to thoroughly familiarise himself with the Concession contract as well as current Contracts that are underway and issues that require attention.

Thereafter the time requirements are expected to involve meetings and issues that will need to be resolved with a time commitment of between 20% and 30% of the PC's time depending on the degree to which tasks can be delegated to DPC's and the nature of the issues involved.

C3.9.2 Primary Duties Related to CC Administration

- i) Review reports specified in the Concession Contract and its Annexures
- ii) Conduct inspections and reviews specified in the Concession Contract and its Annexures
- iii) Co-ordination and direction of all activities of the Independent Engineer
- iv) Project administration
- v) Contract management - Concession Contract and O&M Works
- vi) Annual review of expansion programme
- vii) Monitor TOC and Performance Certificates on Administered Contracts

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

- viii) Review disputes, rule on claims, issue variations, authorise payments, recommend imposition of penalties where appropriate
- ix) Monitor expropriation issues
- x) Monitor conformance to EMP's (Annexure 2 Environmental Requirements)
- xi) Periodic inspections
- xii) Monitor toll tariff review, toll revenues and highway usage fee

C3.9.3 Co-ordination and Supervision

- i) Deputy Project Coordinators
- ii) Appointment of Specialist staff as and when required

C3.9.4 Reports

- i) Reports on reviews where appropriate
- ii) 6 monthly summary of audits and reviews

C3.9.5 Meetings

- i) Quarterly meetings attended by The Agency and Concessionaire.
- ii) Contract site meetings for expansion and rehabilitation works if necessary
- iii) Environmental inspection and meetings

C3.9.6 Transfer (Hand Back)

- i) Assess and certify the Highway to be in the required condition in terms of Clause 3.10 of the Concession Contract for transfer to the Agency
- ii) Co-ordinate and agree with the Concessionaire an audit program in order to determine the Concessionaires compliance with the Concession Contract requirements for Transfer (Hand Back).
- iii) Endeavor to ensure that the certification for Transfer (Hand Back) is complete on or before 1 November 2029

C3.9.7 Delegation

The Project Coordinator may delegate any of the abovementioned duties to Deputy Coordinators or other approved personnel in exceptional circumstances, and to be approved by the Agency and N3TC.

C3.9.8 Deputy Project Coordinators (DPC)

The Deputy Project Coordinator is primarily responsible for auditing and monitoring of operations and maintenance work as well as supporting the PC as required in respect of Contract Site meetings and reporting.

It is envisaged that the DPC will be involved for between 30% and 40% of his time for the duration of the appointment.

CONTRACT SAPR NO304102/1B: PROFESSIONAL SERVICES FOR THE ROLE OF THE INDEPENDENT ENGINEER ON THE N3 TOLL ROAD CONCESSION CONTRACT

C3.9.9 Primary Duties and Responsibilities

- i) Assist the PC with monitoring of individual contracts and attendance at site meetings.
- ii) Routine surveillance/inspections of road and road furniture as and when required
- iii) Issue and close out Surveillance Memos and Safety Notices
- iv) Monitor Incident Management System and associated emergency services
- v) Monitor works contracts for safety and quality
- vi) Monitor the Operator's compliance with environmental control and safety measures
- vii) Monitor social issues

C3.9.10 Meetings

- i) Quarterly meetings attended by The Agency and Concessionaire
- ii) Attend Contract Site Meetings if required by the PC
- iii) Attend Roads maintenance meetings (Quarterly) and Toll Plaza Manager's meetings (every second month) as necessary.
- iv) Compile and issue surveillance/audit reports as required

PART C4 ANNEXURES

**Annexure C4.1: Concession Agreement Annexure 1
Engineering Requirements**

**Annexure C4.2: Concession Agreement Annexure 2
Environmental Requirements**

**Annexure C4.3: Concession Agreement Annexure 20
Socio Economic Development**

**Annexure C4.4: Concession Contract
Extract of clause 3.10 and Extract of clause 6**