



agriculture, land reform & rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

TENDER DOCUMENT

INVITATION TO TENDER FOR PROFESSIONAL SERVICES:

CIVIL AND/OR AGRICULTURAL ENGINEERING SERVICES

FOR THE PROJECT

FEASIBILITY STUDY, COMPLETE DESIGN AND CONSTRUCTION
MONITORING OF THE BULWER CLUSTER IRRIGATION SYSTEM IN THE DR
NKOSAZANA DLAMINI ZUMA LOCAL MUNICIPALITY WITHIN THE HARRY
GWALA DISTRICT MUNICIPALITY IN KWAZULU-NATAL.

TENDER NO: SS-KZN7/1/6/3 (831) 000R

CLOSING DATE: 21 July 2022

CLOSING TIME: 11H00

Name of tenderer:

ISSUED BY:
THE DIRECTOR-GENERAL
DEPARTMENT OF AGRICULTURE AND LAND REFORM AND RURAL DEVELOPMENT

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T1: TENDERING PROCEDURES

T1.1 Notice and Invitation to Tender

T1.1.1 The words “**tender**” and “**bid**” in this document or any documents referred to in this document are interchangeable and are deemed to have the same meaning, similarly the words “tenderer” and “tendering Service Provider” are interchangeable and are deemed to have the same meaning. Unless inconsistent with the context, the masculine gender includes the feminine and neuter genders and *vice versa*, and the singular includes the plural and *vice versa*.

T1.1.2 The Government of the Republic of South Africa in its Department of Agriculture and land Reform and Rural Development invites tenders for the provision of **PROFESSIONAL CIVIL OR AGRICULTURAL ENGINEERING SERVICES** as further fully described in C3 Scope of Services hereof.

T1.1.3 The address for collection of tender documents and the telephone number of the tender section at this address are as advertised in the Tender Bulletin.

T1.1.4 A non-refundable bid deposit of R100 that is payable into the following bank account, is required on collection of the bid document.(proof of payment to be produced upon collection):

Banking Details:

Bank: ABSA
Branch: 632005
Account no: 40-5400-6793
Reference No: 04069549

ONLY PRINTED HARD COPIES COLLECTED FROM THE DEPARTMENT WILL BE SOLD AT A NON-REFUNDABLE AMOUNT OF R100. ELECTRONICALLY ISSUED DOCUMENTS ARE FREE OF CHARGE.

On proof of payment documents can be collected from:

T1.1.5 Tender documents may be collected on working days from **01 July 2022 between 07:30 and 12:30 and between 13:15 and 16:00:**

T1.1.6 Queries relating to these documents may be addressed to the Employer's authorised and designated representative who is the departmental project manager:

Mr Mhlengi Ntshangase

Tel no: 033 355 4382
Cell no: 071 878 7877
Fax no: 086 546 5229
Email: mhlengi.ntshangase@dalrrd.gov.za

Physical address: Department of Agriculture, Land Reform and Rural Development
270 Jabu Ndlovu Street
Pietermaritzburg

Postal address: Private Bag X 9132
Pietermaritzburg
3200

OR

Queries relating to the issuing of this document and Supply Chain Management may be addressed to:

Mr Bongani Magudulela

Tel no: 033 264 9500

Fax no: 033 342 3904 or 033 342 1991

Email: Bongani.Magudulela@dalrrd.gov.za

T1.1.7 The closing time and date for the receipt of tenders is **11h00 on Thursday 21 July 2022** at the following address:

**Directorate: Finance and Supply Chain Management
Department of Agriculture, Land Reform and Rural Development
1st Floor
270 Jabu Ndlovu Street
PIETERMARITZBURG**

Telephonic, facsimile, electronic and late tenders will not be accepted.

T1.1.8 Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in T1.2 Tender Data.

T1.2 Tender Data

T1.2.1 Standard Conditions of Tender

The conditions of tender are the **Standard Conditions of Tender** attached hereto as appendix A.

Clause number	
	<p>The conditions of tender are the Standard Conditions of Tender as contained in Annex F of the CIDB Standard for Uniformity in Construction Procurement as Board Notice 62 of 2004 in Government Gazette No 26427 of 9 June 2004 as amended in Board Notice 67 of 2005 in Government Gazette No 27831 of 22 July 2005, Board Notice 99 of 2005 in Government Gazette No 28127 of 14 October 2005 and Board Notice 92 of 2006 in Government Gazette No 29138 of 18 August 2006, Board Notice 9 of 2008 in Government Gazette No 30692, of 1 February 2008, Board Notice 11 of 2009 in Government Gazette No 31823, of 30 January 2009 and Board Notice 86 of 2010 in Government Gazette No 33239 of 28 July 2015 (see www.cidb.org.za).</p> <p>The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.</p> <p>Each item of data given below is cross-referenced to the clauses marked "F" in the Standard Conditions of Tender to which it mainly applies.</p> <p>By submitting a tender in response to T1.1 Notice and Invitation to Tender above, the tenderer binds himself to a <i>pactum de contrahendo</i> (contract aimed at conclusion of another contract), the terms of which are contained in the Standard Conditions of Tender and T1.2 Tender Data</p>
F.1.1	The Employer is the Government of the Republic of South Africa in its Department of Agriculture, Land Reform and Rural Development.
F.1.2	<p>For this Contract the single volume approach is adopted.</p> <p>This procurement document has been formatted and compiled under the headings for a single volume approach as contained in table 6 of the CIDB's "Standard for Uniformity in Construction Procurement."</p>

	<p>The tendering Service Provider's attention is specifically drawn to the T2 Returnable Documents identified in the T2.1 List of Returnable Documents and in the T2.2 Returnable Schedules. The Returnable Documents must be obtained, and the Returnable Schedules must be completed by a tenderer when submitting a tender. The tenderer must complete these documents, including the "Offer" document in C1.1 Form of Offer and Acceptance, and deliver his tender back to the Employer bound as it was received.</p> <p>The tender document, issued by the Employer, comprises the following separate identifiable documents collectively forming the "Tender Document in a single volume":</p> <p><u>The Tender</u></p> <p>T1: Tendering Procedures</p> <p> T1.1 Notice and Invitation to Tender</p> <p> T1.2 Tender Data</p> <p>T2: Returnable Documents</p> <p> T2.1 List of Returnable Documents</p> <p> T2.2 Returnable Schedules</p> <p><u>The Contract</u></p> <p>C1: Agreement and Contract Data</p> <p> C1.1 Form of Offer and Acceptance</p> <p> C1.2 Contract Data</p> <p>C2: Pricing Data</p> <p> C2.1 Pricing Instructions</p> <p> C2.2 Activity Schedule</p> <p>C3: Scope of Services</p> <p>C4: Site Information</p> <p>Appendices A, B and C</p>
F.1.4	<p>The Employer's agent for the purpose of this tender is deemed to be the authorised and designated representative of the Employer, who will be the departmental project manager as noted in T1.1.6 Notice and Invitation to Tender.</p>

F.2.1

Tenders will only be considered for acceptance if (i.e. will only be regarded as responsive if):

1. The tendering Service Provider is a Civil Engineering and / or Agricultural Engineering business undertaking and which is owned and controlled by registered professionals by at least a percentage determined by the Engineering Council of South Africa, in its Code of Professional Conduct, in terms of number, shareholding and voting power, who are registered in terms of the Engineering Profession Act, 2000 (Act no 46 of 2000), and who will hereafter be referred to as **registered principals** of the business undertaking,

In the event of any legal entity, as meant above, being a listed public Company on the stock exchange, the percentages related to ownership and control referred to are to be deemed relevant to persons duly appointed as Directors of such entity.

2. Copies of certificates or other documentation clearly proving current professional registration with the relevant council, including registration numbers, of all the registered principals mentioned in 1 above are included with the tender as part of the returnable documentation. In the event of any legal entity, as meant above, being a private Company with shareholding, the same information/documentation as for registered principals must be provided with the tender, in respect of all Directors formally appointed to manage the business undertaking. Sole Proprietors, Partners in Partnerships, and Members of Close Corporations are principals as defined in 1 above and information/documentation in respect of such persons must be provided as described;
3. The information, required in respect of 1 and 2 above, has been provided for all Service Providers tendering in consortium or joint venture;
4. At least one registered professional civil engineer or agricultural engineer, of whom the same documentation as in 2 above has been included in the tender, of the tendering Service Provider has been listed in C1.2.3, clause 7.1.2 Key Persons;
- 4.1 The lead engineer must be registered on the South African Institute of Irrigation (SABI) as an approved irrigation designer. Certificate to be attached
5. All Returnable Documents mentioned in T2: Returnable Documents (T2.1 List of Returnable Documents and T2.2 Returnable Schedules) have been included in the tender;
6. (a) The tendering Service Provider has provided the required information/documentation to enable an evaluation panel to perform a risk assessment as described in 6(b) hereafter and referred to in T2.1 – sub paragraph 5;
- (b) Tender offers are judged by an evaluation panel to represent an acceptable risk to the Employer. Such risk will be evaluated against the criteria listed below. An assessment of unacceptable risk on any single criterion will constitute unacceptable risk for the award as a whole, resulting in the tender to be disqualified and removed from further consideration.

The risk criteria are as follows:

Description of risk criteria and sub criteria

(Note: Information provided in the returnable documentation must be provided in sufficient detail to enable the evaluation panel to evaluate the risk criteria set out below. The Employer reserves the right to request further clarification, elucidation, additional documentation/information, etc. as may be required to evaluate the tender. The afore mentioned can also entail that the persons, named in the schedule of Key Persons (C1.2.3 Data provided by the Service Provider, clause 7.1.2), be invited to an interview.

- | | |
|---|--|
| A | Allocation of suitably qualified and appropriately experienced human resources , both in respect of principals and/or other staff (professional, technical and/or administrative) of the tendering Service Provider to the project, as described in the schedule of Key Persons in terms of clause 7.1.2 of the General Conditions of Contract, as proof that the tendering Service Provider will be able to react/respond appropriately to the Services required herein. |
|---|--|

	<p>[An opinion will be formed by each of the members of an evaluation panel according to his/her assessment of the qualifications and experience of the human resources allocated to the project in terms of the Key Persons (C1.2.3 Data provided by the Service Provider, clause 7.1.2), from information contained in curriculum/curricula vitae submitted with the tender. Members of the evaluation panel will discuss their respective risk perceptions in order to reach consensus, failing which the specific risk will be put to the vote. No risk assessment will be performed for this criterion in the absence of relevant information/ curricula vitae with the tender and will therefore render the tender as unacceptable and excluded from further consideration.]</p>
B	<p>The tendering Service Provider's experience and performance on comparable projects during the past 5 years. Aspects to be regarded as "comparable" includes (but may be extended according to circumstances): size of projects (measured against monetary value, or other project quantifying parameters), nature of projects (building, engineering, high/low rise, etc.), locality/area of execution (site-specific influences, knowledge of local conditions, etc.), complexity of project, projects for similar client department irrespective of end purpose of buildings/facilities created or in progress of being created and time scales of projects (normal, fast track, etc) and stage of its/their development.</p> <p>[An opinion will be formed by each of the members of an evaluation panel according to his/her assessment of the experience and performance of the tendering Service Provider from information submitted with the tender (in written-, report- and/or brochure format), and upon further investigations/reference checks that may be performed, for which purpose the tendering Service Provider must include names and contact particulars of present and previous Employers to whom services are/were rendered. The Employer retains the right to contact references not mentioned by the tendering Service Provider. Members of the evaluation panel will discuss their respective risk perceptions in order to reach consensus, failing which the risk assessment will be put to the vote. No risk assessment will be performed for this criterion in the absence of relevant information with the tender and will therefore render the tender as unacceptable and excluded from further consideration.]</p>
C	<p>Confirmation of the required level of professional indemnity insurance specified in terms of Contract Data clause 5.4.1 (C1.2.3 Data provided by the Service Provider).</p> <p>[If confirmation/proof of professional indemnity insurance is not duly confirmed in C1.2.3 Data provided by the Service Provider, the risk to Employer will be regarded as unacceptable and render the tender unacceptable on grounds of not being to specification. The Employer retains the right to request documentary proof of such insurance as part of the tender evaluation process. Unconfirmed professional indemnity insurance will render the tender as unacceptable i.t.o. risk and excluded from further consideration.]</p>
D	<p>Attendance of compulsory clarification meeting, if applicable in terms of F.2.7 below, by a representative of the tendering Service Provider.</p> <p>[Non-attendance, if compulsory in terms of F.2.7, will be regarded as a risk to the Employer in that salient information required for tender purposes would not have been to the knowledge of the tendering Service Provider, rendering any resultant tender to be incomplete. Non-attendance will render the tender a risk to the Employer and therefore excluded from further consideration.</p> <p>In the event of the clarification meeting not being compulsory, this risk criterion will not be applicable.]</p>
<p>Note: Any tender not complying with any one of the four of the above-mentioned stipulations, numbered A to D above, will be regarded as non-responsive and will therefore <u>not</u> be considered for further evaluation.</p>	

F.2.7	<p>A tender clarification meeting will be held in respect of this tender. Attendance of said clarification meeting is compulsory.</p> <p>The particulars of said clarification meeting are: Location: Department of Agriculture Land Reform and Rural Development 188 Hoosen Haffejjee Pietermaritzburg 3200 Date: 08 July 2022 Starting time: 11H00</p>
F.2.13.3	Each tender offer communicated on paper shall be submitted as an original.
F.2.13.4	Delete the last sentence of the paragraph: "Signatories for ... of the tender offer."
F.2.13.5	<p>The Employer's addresses for delivery of tender offers are as advertised in the Tender Bulletin.</p> <p>In addition, the following identification details must be provided on the <u>back</u> of the envelope: Tenderer's name, contact address and telephone number and in the top left corner on the back of the envelope: "Tender no. " (and fill in the tender number as on the front page hereof) "Tender for Civil and/or Agricultural Engineering Services".</p>
F.2.13.6	A two-envelope procedure will not be followed.
F.2.15	The closing time for submission of tenders is on the 21 July 2022 at 11H00.
F.2.16	The tender validity period is 90 Calendar Days. For tenders closing in October, November and December the tender validity period is 90 Calendar Days.
F.2.19	The tenderer shall provide access for inspections to his offices as may be required by the Employer.
F.2.22	Not a requirement.
F.2.23	The tenderer is required to submit with his tender all documents listed in T2 Returnable Documents, T2.1 and T2.2.
F.3.4	<p>The time and location for opening tender offers are: Time: Tenders will be opened immediately or as soon as possible after the closing time as stipulated on page 1 of this document: Location: Department of Agriculture Land Reform and Rural Development (PSSC) 270 Jabu Ndlovu (Loop) Street 1st Floor,</p>
F.3.5	A two-envelope procedure will not be followed.
F.3.11	The procedure for the evaluation of responsive tenders is Method 2: financial offer and preference.
F.3.11.7	<p>Scoring financial offers:</p> <p>The formula to determine points for price is:</p> $W_C = W_3 \times P_m / P$ <p>where: W_C = the number of tender evaluation points awarded for the financial offer; W_3 = the number of tender evaluation points for financial offer and equals:</p> <ol style="list-style-type: none"> 1) 90 where the financial value inclusive of VAT of all responsive tenders received have a value in excess of R 50 000 000; or 2) 80 where the financial value inclusive of VAT of one or more responsive tender offers equals or is less than R 50 000 000; <p>P_m = the lowest acceptable tender offer; P = the tender offer under consideration.</p> <p>80/20 Split is applicable to this tender</p>

F.3.11.8
(continued)

Scoring for preferences:

5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 The PPPFA prescribes that the lowest acceptable bid will score 80 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.

Calculating of points for B-BBEE status level of contribution

Points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBE Contributor	Status Level of	Number of Points
1		20
2		18
3		16
4		12
5		8
6		6
7		4
8		2
Non-compliant contributor		0

- 5.2 Bidders must submit original and valid B-BBEE Status Level Verification Certificate or certified copies thereof, issued by accredited Verification Agencies by SANAS together with their bids, to substantiate their B-BBEE claims. The Exempted Micro Enterprise/QSE must submit a BBBEE sworn affidavit
- 5.3 Bidders who do not submit B-BBEE Status Level Verification Certificate or are non-compliant contributors to be B-BBEE do not qualify for preference points for B-BBEE.

F.3.11.9
(continued)

Calculate total tender evaluation points:

The point calculated for financial offer will be added to the point scored for preference for each individual tender offer according to the formula:

Total tender evaluation points = W_c + sum of N_p for (a), (b) and (c) above.

Quality (functionality) will be scored on those tenders regarded as being responsive. The CRITERIA to be applied in evaluating the proposal is set out in the table below:

0- non-compliance, 1- poor, 2-fair, 3- good, 4- excellent, 5- exceeding expectations

Criterion	Weight	Value	Comments / Remarks
Proposed work plan (approach and methodology)	20		
Tenderer's previous experience / Successful completion of similar projects with a minimum value of R 45 000 000.00 for construction and R 5 000 000,00 on fees (relevant to Irrigation scheme designs and project management), provide contactable references and contact details. <i>Points will be allocated as follows:</i> Above 5 Projects in the last 5yrs = 5 4 Projects in the last 5yrs = 4 3 Projects in the last 5yrs = 3 2 Projects in the last 5yrs = 2 1 Projects in the last 5yrs = 1 None = 0	30		
Experience and Qualification of key personnel (submission of short CV and certified copies of qualifications and registration certificates). <i>Points will be allocated as follows:</i> Registered Professional Civil Engineer or Agricultural Engineer with post registration experience Above 5yrs = 5 Above 4 - 5yrs = 4 Above 2 - 4yrs = 3 Above 1 - 2yrs = 2 Less than 1yr. = 1 No CV's Submitted= 0	30		
Experience and Qualification of key personnel -Agricultural-economist (submission of short CV and certified copies of qualifications and registration certificates). <i>Points will be allocated as follows:</i> experience: Above 5yrs = 5 Above 4 - 5yrs = 4 Above 2 - 4yrs = 3 Above 1 - 2yrs = 2 Less than 1yr. = 1 No CV's Submitted= 0	10		
Experience and Qualification of key personnel in Social Facilitation (submission of short CV and certified copies of qualifications).	10		

	Points will be allocated as follows: Post-Tertiary degree exp.			
	<p style="text-align: right;">Above 5yrs = 5 Above 4 - 5yrs = 4 Above 2 - 4yrs = 3 Above 1 - 2yrs = 2 Less than 1yr. = 1 No CV's Submitted = 0</p>			
	Total	100		
	<p>The proposal will be evaluated individually on score sheets, by a representative evaluation panel according to the evaluation criteria indicated above. All service providers who scored less than 60 out of 100 points for functionality will not be considered further.</p> <p>NB: Points scored above 60 out of 100 for Quality (functionality) will not have an influence on the total tender evaluation points. Method 2 (i.e. Quality financial offer and preferences) will be used to calculate the total tender evaluation points.</p>			
F.3.17	The number of paper copies of the signed contract to be provided by the employer is <u>one</u> .			

T2: RETURNABLE DOCUMENTS

This tender document in its entirety, duly initialled on each page, all returnable documents, which must be attached to this tender document, and all returnable schedules must be returned when the tender is submitted.

T2.1 List of Returnable Documents (to be obtained/compiled by the tenderer and attached to this tender). All documents must be duly completed and signed where applicable.

1. Copies of present registration with the **Engineering Council of South Africa** as "Professional", with the registration numbers, of all the registered principals and professionals mentioned under T1.2 Tender Data, clause F.2.1, item 2, as well as in C1.2.3 Data provided by the Service Provider, clause 7.1.2 Key Persons
2. At least one key person listed under T1.2 Tender Data, clause F.2.1, item 2, as well as in C1.2.3 Data provided by the Service Provider, clause 7.1.2 Key Persons must be registered with South African Irrigation Institute (SABI) as an Irrigation design engineer.
3. Tax compliance pin issued by the South African Revenue Services (SARS), where consortium/ joint ventures are involved each party to the association must submit a separate valid original Tax Clearance Certificate. **(TCC / PIN letter from SARS or CSD)**
4. Information relating to the legal status of the tendering Service Provider as per the table on page 4 of form PA-16.1(PSB) (form PA-16.1 (PSB) is bound in hereafter).
5. An exposition, with necessary annexures, in suitable format and in sufficient detail, providing all the information necessary for the evaluation panel to be able to evaluate the risk set out in T1.2 Tender Data, clause F.2.1.

T2.2 Returnable Schedules (all bound into this tender document – to be completed by tenderer) All documents must be duly completed and signed where applicable.

1. Form of Offer and Acceptance (C1.1).
2. Data provided by the Service Provider (C1.2.3).
3. If applicable, a Site Inspection Meeting Certificate, **DALRRD-16.1 (PSB)** for compulsory clarification meeting (form DALRRD-16.1 (PSB) is bound in hereafter).
4. A Declaration of Interest and Tenderer's Past Supply Chain Management Practices (SBD 4 and SBD 8)
5. A resolution, PA-15.1 (for a single Service Provider tendering herein) or PA-15.2 plus special resolution, PA-15.3 (for multiple Service Providers tendering in consortium or joint venture herein) (forms PA-15.1 to 3 are bound in hereafter).
6. Preference points claim form and affidavit, (SBD 6.1) is bound in hereafter). (Failure to complete this form will be interpreted to mean that preference points are not claimed by the tendering Service Provider.)
7. Certificate of independent bid determination (SBD.9)
8. Activity Schedule for Value Based Fees (C2.2.2) – only if remuneration is stipulated as "value based" in C2.1.1.1.
9. If applicable, a security clearance forms for projects requiring a security clearance.

DALRRD-16.1 (PSB): TENDER CLARIFICATION MEETING CERTIFICATE

Project title:	FEASIBILITY STUDY, COMPLETE DESIGN AND CONSTRUCTION MONITORING OF THE BULWER CLUSTER IRRIGATION SYSTEM IN THE DR NKOSAZANA DLAMINI ZUMA LOCAL MUNICIPALITY WITHIN THE HARRY GWALA DISTRICT MUNICIPALITY IN KWAZULU-NATAL.
Tender no:	SS-KZN 7/1/6/3 (831) 000R

This is to certify that I, _____

representing _____

—

attended the tender clarification meeting on: _____

I further certify that I am satisfied with the description of the work and explanations given at the tender clarification meeting and that I understand the work to be done, as specified and implied, in the execution of this contract.

Name of Tenderer	Signature	Date

Name of DALRRD Representative	Signature	Date

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person connected to the bidder is employed :
Position occupied in the state institution:

Any other particulars:
.....
.....
.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? YES / NO

2.7.2.1 If yes, did you attached proof of such authority to the bid document? YES / NO

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

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

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? YES / NO

2.8.1 If so, furnish particulars:

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

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

YES/NO

2.10.1 If so, furnish particulars.

.....

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES/NO

2.11.1 If so, furnish particulars:

.....

3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Reference Number	Tax	State Number / Persal Number	Employee

4 DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

SBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? To access this Register enter the National Treasury's website, www.treasury.gov.za , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM
IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION
MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

PA-15.1: RESOLUTION OF BOARD OF DIRECTORS

RESOLUTION of a meeting of the Board of *Directors / Members / Partners of:

(legally correct full name and registration number, if applicable, of the Enterprise)

Held at _____ (place)

on _____ (date)

RESOLVED that:

- 1 The Enterprise submits a Tender to the Department of Agriculture and land Reform and Rural Development in respect of the following project:

(project description as per Tender Document)

Tender Number: _____ (Tender Number as per Tender Document)

- 2 *Mr/Mrs/Ms: _____
in *his/her Capacity as: _____ (Position in the Enterprise)

and who will sign as follows: _____

be, and is hereby, authorised to sign the Tender, and any and all other documents and/or correspondence in connection with and relating to the Tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the Tender to the Enterprise mentioned above.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			

Note:

1. * Delete which is not applicable.
2. **NB.** This resolution must be signed by all the Directors / Members / Partners of the Tendering Enterprise.
3. Should the number of Directors / Members / Partners exceed the space available above, additional names capacity and signatures must be supplied on a separate page.

ENTERPRISE STAMP

PA-15.2: RESOLUTION OF BOARD OF DIRECTORS TO ENTER INTO CONSORTIA OR JOINT VENTURES

RESOLUTION of a meeting of the Board of *Directors / Members / Partners of:

(Legally correct full name and registration number, if applicable, of the Enterprise)

Held at _____ (place)

on _____ (date)

RESOLVED that:

1. The Enterprise submit a Tender, in consortium/joint venture with the following Enterprises:

(List all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the consortium/joint venture)

to the Department of Agriculture and land Reform and Rural Development in respect of the following project:

(Project description as per Tender Document)

Tender Number: _____ (Tender Number as per Tender Document)

- 1 *Mr/Mrs/Ms: _____

in *his/her Capacity as: _____ (Position in the Enterprise)

and who will sign as follows:

be, and is hereby, authorised to sign a consortium/joint venture agreement with the parties listed under item 1 above, and any and all other documents and/or correspondence in connection with and relating to the consortium/joint venture, in respect of the project described under item 1 above.

- 2 The Enterprise accept joint and several liability with the parties listed under item 1 above for the due fulfilment of the obligations of the joint venture deriving from, and in any way connected with, the Contract to be entered into with the Department in respect of the project described under item 1 above.
- 3 The Enterprise choose as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and the Contract with the Department in respect of the project under item 1 above:

Physical address: _____

_____ (code)

Postal Address: _____

 _____ (code)

Telephone number: _____ (code)

Fax number: _____ (code)

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

Note:

1. * Delete which is not applicable.
2. **NB.** This resolution must be signed by all the Directors / Members / Partners of the Tendering Enterprise.
3. Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.

ENTERPRISE STAMP

PA-15.3: SPECIAL RESOLUTION OF CONSORTIA OR JOINT VENTURES

RESOLUTION of a meeting of the duly authorised representatives of the following legal entities who have entered into a consortium/joint venture to jointly tender for the project mentioned below: *(legally correct full names and registration numbers, if applicable, of the Enterprises forming a Consortium/Joint Venture)*

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

7 _____

8 _____

Held at _____ *(place)*

on _____ *(date)*

RESOLVED that:

- A. The above-mentioned Enterprises submit a tender in Consortium/Joint Venture to the Department of Agriculture, land Reform and Rural Development in respect of the following project:

(Project description as per Tender Document)

Tender Number: _____ *(Tender Number as per Tender Document)*

- B. Mr/Mrs/Ms: _____
in *his/her Capacity as: _____ (Position in the Enterprise)
and who will sign as follows: _____
- be, and is hereby, authorised to sign the tender, and any and all other documents and/or correspondence in connection with and relating to the tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the tender to the Enterprises in Consortium/Joint Venture mentioned above.
- C. The Enterprises constituting the Consortium/Joint Venture, notwithstanding its composition, shall conduct all business under the name and style of:

- D. The Enterprises to the Consortium/Joint Venture accept joint and several liability for the due fulfilment of the obligations of the Consortium/Joint Venture deriving from, and in any way connected with, the Contract entered into with the Department in respect of the project described under item A above.
- E. Any of the Enterprises to the Consortium/Joint Venture intending to terminate the consortium/joint venture agreement, for whatever reason, shall give the Department 30 days written notice of such intention. Notwithstanding such decision to terminate, the Enterprises shall remain jointly and severally liable to the Department for the due fulfilment of the obligations of the Consortium/Joint Venture as mentioned under item D above.
- F. No Enterprise to the Consortium/Joint Venture shall, without the prior written consent of the other Enterprises to the Consortium/Joint Venture and of the Department, cede any of its rights or assign any of its obligations under the consortium/joint venture agreement in relation to the Contract with the Department referred to herein.
- G. The Enterprises choose as the *domicilium citandi et executandi* of the Consortium/Joint Venture for all purposes arising from the consortium/joint venture agreement and the Contract with the Department in respect of the project under item A above:

Physical address: _____

_____ (code)

Postal Address: _____

_____ (code)

Telephone number: _____ (code)

Fax number: _____ (code)

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

Note:

- 1 * Delete which is not applicable.
- 2 **NB:** This resolution must be signed by all the Duly Authorised Representatives of the Legal Entities to the Consortium / Joint Venture submitting this tender.
3. Should the number of Duly Authorised Representatives of the Legal Entities joining forces in this tender exceed the space available above, additional names, capacity and signatures must be supplied on a separate page.
4. Resolutions, duly completed and signed, from the separate Enterprises who participate in this Consortium / Joint Venture must be attached to the Special Resolution.

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to not exceed **R50 000 000** (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable: or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

POINTS	
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20

or

90/10

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in

accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>

Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One person business/sole propriety

Close corporation

Company

(Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

Manufacturer

Supplier

Professional service provider

Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent

basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>	<p>..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>
--	---

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

C1: AGREEMENT AND CONTRACT DATA

C1.1 Form of Offer and Acceptance

Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

CIVIL AND/OR AGRICULTURAL ENGINEERING SERVICES

on the Project

FEASIBILITY STUDY, COMPLETE DESIGN AND CONSTRUCTION MONITORING OF THE BULWER CLUSTER IRRIGATION SYSTEM IN THE DR NKOSAZANA DLAMINI ZUMA LOCAL MUNICIPALITY WITHIN THE HARRY GWALA DISTRICT MUNICIPALITY IN KWAZULU-NATAL.

The tenderer, identified in the offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Service Provider under the Contract including compliance with all its terms and conditions according to their true intent and meaning for remuneration to be determined in accordance with the conditions of Contract identified in the Contract Data.

The offered price for Civil and/or Agricultural Engineering Services, inclusive of value added tax, is

R (in figures)

.....

..... **Rand** (in words)

Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.

This offer may be accepted by the Employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the Tender Data, whereupon the tenderer becomes the party named as the Service Provider in the conditions of Contract identified in the Contract Data.

THIS OFFER IS MADE BY THE FOLLOWING LEGAL ENTITY: (cross out block which is not applicable)

Company or close corporation:

.....

.....

and: whose registration number is:

.....

and: whose income tax reference number is:

.....

Natural person or partnership:

.....

.....

OR whose identity number(s) is/are:

.....

whose income tax reference number is/are:

.....

AND WHO IS (if applicable):

Trading under the name and style of:

.....

AND WHO IS:

Represented herein, and who is duly authorised to do so, by: Mr/Mrs/Ms: In his/her capacity as: 	Note: A resolution / power of attorney, signed by all the directors / members / partners of the legal entity must accompany this offer, authorising the representative to make this offer.
--	---

SIGNED FOR THE TENDERER:

Name of representative	Signature	Date

WITNESSED BY:

Name of witness	Signature	Date

The tenderer elects as its *domicilium citandi et executandi* in the Republic of South Africa, where any and all legal notices may be served, as (physical address):

.....

Other contact details of the Tenderer are:

Telephone no: Cellular phone no:

Fax no:

Postal address:

Banker: Branch:

Acceptance

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

The terms of the Contract are contained in:

- Part C1 Agreements and Contract Data, (which includes this agreement)
- Part C2 Pricing Data
- Part C3 Scope of Services

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from set documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of Contract identified in the Contract Data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect, if sent by registered post, 4 days from the date on which it was posted, if delivered by hand, on the day of delivery, provided that it has been delivered during ordinary business hours, or if sent by fax, the first business day following the day on which it was faxed. Unless the tenderer (now Service Provider) within seven working days of the date of such submission notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

For the Employer:

Name of signatory	Signature	Date

Name of Organisation:	Department of Agriculture Land Reform and Rural Development

Witnessed by:

Name of witness	Signature	Date

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 matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the Contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1.1.1. Subject:
Detail:
1.1.2. Subject:
Detail:
1.1.3. Subject:
Detail:
1.1.4. Subject:
Detail:
1.1.5. Subject:
Detail:
1.1.6. Subject:
Detail:

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 tender 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.

C1.2 Contract Data

C1.2.1 Standard Professional Services Contract

The conditions applicable to this Contract are the **Standard Professional Services Contract (July 2009)** published by the Construction Industry Development Board, and are attached hereto as appendix B.

C1.2.2 Data provided by the Employer

Clause	
	<p>The General Conditions of Contract in the Standard Professional Services Contract (July 2009) make several references to the Contract Data for details that apply specifically to this tender. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the General Conditions of Contract.</p> <p>Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies (appendix B).</p>
1	The Employer is the Government of the Republic of South Africa in its Department Agriculture Land Reform and Rural Development.
1	The Period of Performance is from inception of this Contract until the Service Provider has completed all Deliverables in accordance with the Scope of Services.
1	The Project is: Civil and/or Agricultural Engineering Services for the Project: FEASIBILITY STUDY, COMPLETE DESIGN AND CONSTRUCTION MONITORING OF THE BULWER CLUSTER IRRIGATION SYSTEM IN THE DR NKOSAZANA DLAMINI ZUMA LOCAL MUNICIPALITY WITHIN HARRY GWALA DISTRICT MUNICIPALITY IN KWAZULU-NATAL.
3.4 and 4.3.2	The authorised and designated representative of the Employer is the departmental project manager, details of whom are as indicated in T1.1 Notice and Invitation to Tender under item T1.1.6.
3.5	The Services shall be executed in the Service Provider's own office and on the Project, site as described in item C3.2.2 Project description. No portion of the work may be performed by a person employed by the State. No portion of the work may be sublet to any other person or persons without the prior written approval of the Employer.
3.6	Omit the following: "... within two (2) years of completion of the Service ...".
3.12.1	Period of Performance shall be sub dividable in separate target dates according to the programme to be submitted in terms of clause 3.15 hereof. A Penalty amount of R500 per day will be applicable per target date, to a maximum equal to R 50 000, after which the contract may be terminated.
3.15	<u>For fees stipulated as "value based" in C2.1 Pricing Instructions, C2.1.1.1:</u> Programme: A programme for the performance of the Service shall be submitted by the Service Provider, identified as the principal agent in terms of C3.5.1 Service Providers, to the departmental project manager, within a period of two (2) weeks following the briefing meeting. The programme will be the result of the co-ordination of all appointed Service Providers' inputs and shall be in sufficient detail describing key milestones, events and activities linked to the fastest realistic timeframes in which the Service can be delivered. Milestones and events are to be listed based on the Scope of Services described in part C3 of the various appointed Service Providers' tender documents and presented in bar chart format. No milestones may, at the co-ordination stage, be extended beyond the timeframes outlined in C3.2.2.4 Project Programme without acceptable reasons. The programme thus compiled and presented by the principal agent must

	<p>be counter-signed by all appointed Service Providers as proof that programme was agreed upon by all during the said co-ordination action.</p> <p>The Employer retains the right to negotiate such submitted programme with the principal agent in consultation with the appointed Service Providers, if required, to promote the interest of the project.</p> <p><u>For fees stipulated as "time based" in C2.1 Pricing Instructions, C2.1.1.1:</u> Project Execution Plan (PEP): A PEP for the performance of the Service shall be submitted by the Service Provider, to the departmental project manager, within a period of two (2) weeks following the briefing meeting.</p> <p>In the event of the Employer not being satisfied with the submitted PEP, the Parties will negotiate in good faith towards a PEP that will be agreeable to both. Such an agreed-upon PEP will form the basis for the management of the appointment and remuneration purposes. Should circumstance change from the initial briefing, the Service Provider and the Employer will negotiate a revised PEP to satisfy such change(s). Should the Parties fail to reach agreement on the PEP or revised PEP, the matter will be dealt with in terms of clause 12.1.2 of the General Conditions of Contract (appendix B). Should the mediation process fail, the Contract will be deemed to have been mutually terminated and any reasonable fees accrued at that stage settled by the Employer.</p>
5.4.1	Minimum professional insurance cover of R1,5 million, with the first amount payable not exceeding 5% of the value of indemnity, and/or personal liability – all as more comprehensively described in C1.2.3 Data provided by the Service Provider and in respect of which the Service Provider must provide data as required.
5.5	<p>The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions:</p> <ol style="list-style-type: none"> 1. Travelling for which payment will be claimed, as defined in C2.1.7 Travelling and subsistence arrangements and tariffs of charges; 2. Deviate from the final programme as in clause 3.14 above; 3. Deviate from the programme (delayed or earlier); 4. Deviate from or change the Scope of Services; 5. Change Key Personnel on the Service.
8.1	The Service Provider is to commence the performance of the Services immediately after the Contract becomes effective and execution to be as per the programme in clause 3.15 above (see C3 Scope of Services, C3.6 Brief).
8.4.3 (c)	The period of suspension under clause 8.5 is not to exceed two (2) years.
9.1	Copyright of documents prepared for the Project shall be vested with the Employer.
12.1.2	Interim settlement of disputes is to be by mediation.
12.2.1	In the event that the Parties fail to agree on a mediator, the mediator is to be nominated by the president of the Association of Arbitrators (Southern Africa).
12.2.4 / 12.3.4	Final settlement is by litigation.
13.1.3	All partners in a joint venture or consortium shall carry the same professional indemnity insurance as per clause 5.4.1 of the General Conditions of Contract (appendix B).
13.4	Neither the Employer nor the Service Provider is liable for any loss or damage resulting from any occurrence unless a claim is formally made within 10 years from the date of termination or completion of the Contract.
13.6	The provisions of clause 13.6 do not apply to the Contract.
14.4	In the first sentence, change "... period of twenty four months after ..." to "... period of thirty six months after ...".

15	In respect of any amount owed by the Service Provider to the Employer, the Service Provider shall pay the Employer interest at the rate as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act no1 of 1999).
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C1.2.3 Data provided by the Service Provider

Clause	
	Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies (appendix B).
1	The Service Provider is the company, close corporation, natural person or partnership named in C1.1 Form of Offer and Acceptance by the tendering Service Provider.
5.3	The authorised and designated representative of the Service Provider is the person named in the resolution PA-15.1 or PA-15.3 by the tendering Service Provider.
5.4.1	<p><u>Indemnification of the Employer</u></p> <p>I, the undersigned, being duly authorized by the Service Provider, in terms of the completed resolution (PA-15.1 or PA-15.3)</p> <p>.....(Name of authorized person)</p> <p>hereby confirm that the Service Provider known as:</p> <p>.....(Legal name of entity tendering herein)</p> <p>tendering on the project:</p> <p>.....</p> <p>.....(Name of project as per C1.1 Form of offer and acceptance)</p> <p>holds professional indemnity insurance cover, from an approved insurer, duly registered with the Finance Services Board, of not less than R1,5 million, with the first amount payable not exceeding 5% of the value of indemnity. I further confirm that the Service Provider will keep such professional indemnity fully subscribed. I further confirm that should the professional indemnity insurance, with no knowledge of the Employer, be allowed to lapse at any time or in the event of the Service Provider cancelling such professional indemnity insurance, with no knowledge of the Employer, at any time or if such professional indemnity cover is not sufficient, then the Service Provider, (i) accepts herewith full liability for the due fulfilment of all obligations in respect of this Service; and (ii) hereby indemnifies, and undertakes to keep indemnified, the Employer in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the aforesaid Service Provider's intentional and/or negligent wrongful acts, errors and/or omissions in its performance on this Contract.</p> <p>I confirm that the Service Provider undertakes to keep the Employer indemnified, as indicated above, beyond the Final Completion Certificate/Final Certificate by the Employer (whichever is applicable) for a period of ten (10) years after the issue of such applicable certificate.</p> <p>I confirm that the Service Provider renounces the benefit of the <i>exceptionis non causa debiti, non numeratae pecuniae</i> and <i>excussionis</i> or any other exceptions which may be legally raised against the enforceability of this indemnification.</p> <p>Notwithstanding the indemnification required above, the Employer reserves the right to claim damages from the Service Provider for this Project where the Service Provider neglects to discharge its obligations in terms of this agreement.</p> <p>NAME:</p>

	<p>CAPACITY:</p> <p>SIGNATURE:</p>																																	
7.1.2	<p>As an extension of the definitions contained in clause 1 hereof, Key Persons must, for the purposes of this Contract, include one or more of the professionally registered principal(s) of the Service Provider, and/or, one or more professional(s) employed to render professional services, for whom certified copies of certificates or other documentation clearly proving current professional registration with the relevant council, including registration numbers, must be included with the tender as part of the returnable documentation.</p> <p>The Key Persons and their jobs / functions in relation to the Services are:</p> <table border="1"> <thead> <tr> <th>Name</th><th>Principal and/or employed professional(s)</th><th>Specific duties</th></tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr><td>5.</td><td></td><td></td></tr> <tr><td>6.</td><td></td><td></td></tr> <tr><td>7.</td><td></td><td></td></tr> <tr><td>8.</td><td></td><td></td></tr> <tr><td>9.</td><td></td><td></td></tr> <tr><td>10.</td><td></td><td></td></tr> </tbody> </table>	Name	Principal and/or employed professional(s)	Specific duties	1.			2.			3.			4.			5.			6.			7.			8.			9.			10.		
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7.2	A Personnel Schedule is not required.																																	

If the space provided in the table above is not sufficient to describe the **specific duties**, this space may be utilized for such purpose:

C2: PRICING DATA

C2.1 Pricing Instructions

C2.1.1 Basis of remuneration, method of tendering and estimated fees

C2.1.1.1 Professional fees for Civil and/or Agricultural Engineering Services will be paid on a **value basis** as specified in clause C2.1.3.

The words "value based" and "percentage based" used in connection with fee types in this document or any documents referred to in this document are interchangeable and are deemed to have the same meaning.

C2.1.1.2 **Tenderers are to tender:
A percentage of the estimated fees**

as set out below.

C2.1.2 Remuneration for **Civil and/or Agricultural Engineering Services**

C2.1.2.1 **Professional fees shall be calculated as follows for Services rendered by the Service Provider:**

- **the percentage of the normal fees tendered in "C2.2.2 Activity Schedule for Value Based Fees", column (b), plus Value Added Tax, all according to the provisions under C2.1.3.**

C2.1.2.2 The amount tendered herein (C1.1) is for tender purposes only and will be amended according to the application of the value fee scale *vis-à-vis* the actual cost of construction (if basis of remuneration has been set at "value based" according to C2.1.1.1) or the actual number of hours for each level (if basis of remuneration has been set at "time based" according to C2.1.1.1).

C2.1.2.3 Reimbursable rates for typing, printing and duplicating work and forwarding charges as set out under C2.1.6 herein will be paid in full, irrespective of the percentage or rates tendered as referred to in C2.1.1.2 and C2.1.2.1 above.

C2.1.2.4 **Disbursements in respect of all travelling and related expenses** including all travelling costs, time charges and subsistence allowances related thereto. **will not be paid for separately.** **Tenderers must make provision for and include all such costs in their tender when calculating the percentage or rates as described in C2.1.1.2 above.**

The site must be visited as often as the works require for the execution of all duties on the Project. The Service Provider must be available at 24 hours' notice to visit the site if so required. All costs in this regard will be deemed to be included in the applicable fees as stated in C2.1.1.1.

C2.1.2.5 All fee accounts must be accompanied by an updated original written certification by the quantity surveyor, if appointed, of the amount(s) on which fees are based. The onus, however, rests on the Service Provider to calculate fees on the appropriate value and according to the correct fee scale, read in conjunction with this Contract.

C2.1.2.6 All fee accounts need to be signed by a principal of the Service Provider and submitted in original format, failing which the accounts will be returned. Copies, facsimiles, electronic and other versions of fee accounts will not be considered for payment.

C2.1.2.7 For all Services provided on a time basis, time sheets giving full particulars of the work, date of execution and time duration, should be submitted with each fee account.

C2.1.2.8 Payments to the Service Provider will be made electronically according to the banking details furnished by the Service Provider. Any change in such banking details must be communicated to the departmental project manager timeously. Fee accounts, correct in all respects, will be deemed submitted when received by the Employer and settled when electronically processed by the

Employer. The Employer reserves the right to dispute the whole account, any item or part of an item at any time and will deal with such case in terms of clause 14.3 of the General Conditions of Contract (appendix B).

C2.1.2.9 Accounts for Services rendered may be submitted on the successful completion of each stage of work. Interim accounts will only be considered during the construction stage of the works and then not more frequently than quarterly except if otherwise agreed between the authorised and designated representative of the Service Provider and the Employer. Payment of accounts rendered will be subject to the checking thereof by the departmental project manager. The Employer reserves the right to amend the amounts claimed in order to conform to the rates stipulated in this Contract and make payment on the basis of the balance of the account in accordance with clause 14.3 of the General Conditions of Contract (appendix B).

C2.1.2.10 Fee accounts shall be submitted on the Employer's prescribed format, obtainable on the Employer's Website: <http://www.ecsa.co.za/> under "Consultants Guidelines" item 9.3.

C2.1.3 Value based fees

C2.1.3.1 Fees for work done under a value basis fee

Where value based fees are payable, the Service Provider will be remunerated for Services rendered, subject to the provisions in C2.1.2 above and subject to the specific terms and conditions stated below and elsewhere in this document, in accordance with the **ENGINEERING COUNCIL OF SOUTH AFRICA: Guideline Professional Fees (Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 46 of 2000 dated 1 March 2021**, This document is referred to as the '2021 ECSA-Scope of Engineering Services and Tariff of Fees' hereinafter and is appended as appendix C. This tariff of fees will be payable for the full Period of Performance.

C2.1.3.2 Normal services

The fee for normal services shall be the tendered percentage based on the fee provided in the '2021 ECSA-Scope of Engineering Services and Tariff of Fees, clause 4.2.

Where the Service Provider is required to perform a portion of the normal services only, the relevant portion of the fee shall be paid.

C2.1.3.3 Interim payments to the Service Provider

For the purposes of ascertaining the interim payments due, the **cost of the works**, which shall exclude any provisional allowances made to cover contingencies and escalation, shall be:

- the applicable portion of the net amount of the accepted tender, or
- if no tender is accepted, the net amount of the applicable portion of the lowest suitable tender, unless acceptable motivation can be provided to prove that such amount is unreasonable, or
- if the contract is awarded by negotiation the negotiated price, or
- if no tenders are invited or if no suitable tenders are received or if no negotiation is concluded, the estimate. The estimate shall be the one accepted by the Employer as representing the value of the works, which for purposes of interim payments will be deemed to be 80% of the engineers estimate or if appointed, 80% of the quantity surveyors estimate.

C2.1.3.4 Fees for documentation for work covered by a provisional sum

Where a provisional sum is included in the bills of quantities for work to be documented at a later stage, the documentation fee in respect of such work shall be remunerated at the time when the documentation has been completed. The fee shall relate to the type of documentation drawn up by the Civil and/or Agricultural engineer in respect of each section of such work.

C2.1.3.5 Time charges for work done under a value-based fee

Where time charges are payable according to clause 3.2 of the Guidelines for Services and Processes and Estimating Fees for Persons Registered in terms of '2021 ECSA-Scope of Engineering Services and Tariff of Fees as amended in C3.3.2 (if basis of remuneration has been set at "value based" according to C2.1.1.1), the principles as described in the '2021 ECSA-Scope of Engineering Services and Tariff of Fees, clause 4.4, and the rates set out below, will be applicable.

C2.1.3.5.1 Time charges are reimbursable at rates applicable at the time of the actual execution of the specific service. The "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Employer's Website: <http://www.ecsa.gov.za/> under "Consultants Guidelines" item 1.

C2.1.3.5.2 The scale of fees on time charges, on which Value Added Tax is excluded, shall be at the following rates per hour, rounded off to the nearest rand: (see Table 8 of "Rates for Reimbursable Expenses" for the actual amounts calculated in accordance with to the principles laid down below):

- (i) for a person in category A and B: 18,75 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 13 salary range (Director) in the Public Service;
- (ii) for a person in category C: 17,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 12 salary range (Deputy Director second leg) in the Public Service;
- (iii) for a person in category D: 16,5 cents for each R100,00 of his/her gross annual remuneration; provided that this hourly rate shall not exceed 16,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 11 salary range (Deputy Director first leg) in the Public Service.

Hourly rates calculated in terms of (i), (ii) and (iii) above shall be deemed to include overheads and charges in respect of time expended by clerical Personnel which shall, therefore, not be chargeable separately.

C2.1.3.5.3 Unless otherwise specifically agreed in writing, remuneration for the time expended by principals in terms of C2.1.3.5.2 (i) above on a project shall be limited to 5 per cent of the total time expended for time charges in respect of the Project. Any time expended by principals in excess of the 5 per cent limit shall be remunerated at the rates determined in (ii) or (iii) above.

C2.1.3.5.4 Notwithstanding the above, where work is of such a nature that Personnel as described in C2.1.3.5.2 (iii) above are capable of performing such work, it shall be remunerated at that level and not at the rates described in (i) and (ii) above, irrespective of who in fact executed the work.

C2.1.3.5.5 Gross annual remuneration in C2.1.3.5.2 (iii) above shall mean basic salary and guaranteed annual bonus; fringe benefits not included in basic salary; income benefit, as determined from time to time by the South African Revenue Services for income tax purposes, for the private use of a motor vehicle by the employer; employer's contribution to pension/provident fund, medical aid and group life assurance premiums; Compensation Fund and Unemployment Fund contributions, Metropolitan Council levies and any other statutory contributions or levies; all other costs and benefits as per conditions of appointment but excluding any share of profit and payment for overtime.

C2.1.3.5.6 The salaries referred to in C2.1.3.5.2 (i) to (iii) above can change from time to time, which will, therefore, change the rates applicable. These rates will, however, only be adjusted on the first day of each calendar year irrespective of any changes in salary ranges during the relevant year. The rates applicable at the time of the execution of the work as set out in Table 8 of the "Rates for Reimbursable Expenses", as amended from time to time, may be claimed.

C2.1.3.6 Additional Services

C2.1.3.6.1 Additional Services pertaining to all Stages of the Project
Unless separately provided for hereunder and scheduled in the Activity Schedule, no separate payment shall be made for the additional services specified in C3.3.3. The cost of providing these services shall be deemed to be included in the value-based fee tendered for normal services.

C2.1.3.6.2 Construction monitoring

The construction monitoring requirements are as specified in C3.3.2.2.

(a) If Level 1: Periodic Construction Monitoring
The consulting engineer's staff must:

- (i) visit the works at a frequency agreed with the client or at on-call basis at a notice time agreed with the contractor and the client, with extra visits for works completion inspections, provision of design/technical clarifications and inspections for works defects lists
 - (ii) review random samples of material and work procedures, for conformity to contract documentation, and review random samples of important completed work prior to covering up, or on completion, as appropriate
 - (iii). The cost of providing construction monitoring staff and transport shall be deemed to be included in the value-based fee tendered for normal services.
- (b) Level 2: Part-time Construction Monitoring
- The consulting engineer's staff, or part-time construction monitoring staff must:
- (i) regularly visit the site at a frequency that may vary during the course of the project, and such visits may be daily or weekly, according to the project demands; the frequency and duration of site visits are must be agreed in writing between the client and the consulting engineer prior to commencement of the services
 - (ii) review regular samples of materials and work procedures, for conformity to contract documentation, provide design/ technical clarifications where required and review regular samples of important completed work prior to covering up, or on completion, as appropriate
 - (iii) where the consulting engineer is the sole professional service provider or principal agent, carry out such administration of the project as is necessary on behalf of the client.
- (c) Level 3: Full-time Construction Monitoring (full-time staff resident on site for the duration of the works and paid for by the client as an additional service)
- The full-time construction monitoring staff must:
- (i) maintain a full-time presence on site to constantly review samples of materials and work procedures, for conformity to contract documentation, provide design/ technical clarifications and review completed work prior to covering up, or on completion, as appropriate
 - (ii) assist with the preparation of as-built records and drawings to the extent required in the agreement with the client
 - (iii) where the consulting engineer is the sole professional service provider or principal agent, carry out such administration of the project as is necessary on behalf of the client

C2.1.3.6.3 Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)

No separate payment shall be made for the service specified in C3.3.2.3. The cost of providing this service shall be deemed to be included in the value-based fee tendered for normal services.

C2.1.3.6.4 Quality Assurance System

No separate payment shall be made for the implementation of a quality management system as specified in C3.3.2.4. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

C2.1.3.6.5 Lead Consulting Engineer

No separate payment shall be made for assuming the leadership of an Employer specified joint venture, consortium or team of consulting engineers as specified in C3.3.2.5. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

C2.1.3.6.6 Principal Agent of the Client

No separate payment shall be made for assuming the role of principle agent of the Employer if specified in C3.3.2.6. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

C2.1.3.6.7 Land Survey and Geotechnical Studies

Separate payment shall be made for the services specified in C3.3.3.1. The cost of providing this service is included in the Activity Schedule for value-based fees.

C2.1.3.6.8 Other unspecified services

The Employer may order duties that fall outside the scope of the project as tendered. Such additional duties may involve, but not limited to:

- Additional design requirements
- Evaluation of alternative tenders
- Additional investigations during the Defects and Liability Period
- Diverse other services

Any such additional services that may be required will be remunerated on a Time Basis as set out in C2.1.3.5. The level of expertise necessary for any such additional work shall be concomitant with the issues to be addressed. The category of personnel necessary to undertake the work shall be approved by the Employer. Any additional identified service shall be fully scheduled and submitted to the Employer for approval prior to the commencement thereof.

C2.1.3.6.9 Environmental Impact Assessment

Separate payment shall be made for the service specified in C3.2.2.1. The cost of providing this service is included in the Activity Schedule for value-based fees.

C2.1.3.6.10 Water Use Licence Application

Separate payment shall be made for the service specified in C3.2.2.1. The cost of providing this service is included in the Activity Schedule for value-based fees.

C2.1.4 Time based fees

C2.1.4.1 Fees for work done under a time-based fee

Where time based fees are payable (if basis of remuneration has been set at "time basis" according to C2.1.1.1), the principles as described in clauses 4.4 (1), (2) and (3) of the '2021 ECSA-Scope of Engineering Services and Tariff of Fees, excepting that the rates referred to in clause 4.4 (3) shall be replaced by the various rates per hour tendered for the various categories in C2.2.2 Activity Schedule for Time Based Fees, column (e). These rates will be used for the full Period of Performance.

C2.1.4.2 The various categories (referred to in C2.2.2 Activity Schedule for Time Based Fees, are the categories described in clauses 4.4 (2) of the '2021 ECSA-Scope of Engineering Services and Tariff of Fees.

C2.1.4.3 Work will be remunerated for at the category level in which it falls as defined in C2.1.4.2 above, irrespective of whether the person who in fact had executed the work functions at a higher category of responsibility and competence.

C2.1.5 Set off

The Employer reserves the right to set off against any amount payable to the Service Provider, any sum which is owed by the Service Provider to the Employer in respect of this or any other project.

C2.1.6 Typing, printing and duplicating work and forwarding charges

C2.1.6.1 Reimbursable rates

The costs of typing, printing and duplicating work in connection with the documentation which must of necessity be done, except those which must in terms of the relevant Manual or other instructions be provided free of charge, shall be reimbursable at rates applicable at the time of the execution of such work. The document "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Employer's Website: <http://www.ecsa.gov.za/> under "Consultants Guidelines" item 1.

C2.1.6.2 Typing and duplicating

If the Service Provider cannot undertake the work himself, he may have it done by another service provider which specialises in this type of work and he shall be paid the actual costs incurred upon submission of statements and receipts which have been endorsed by him confirming that the tariff is the most economical for the locality concerned.

If the Service Provider undertakes the work himself, he shall be paid in respect of actual expenses incurred subject to the maximum tariffs per A4 sheet as set out in Table 1 in the "Rates for Reimbursable Expenses".

Typing and duplicating expenses shall only be refunded in respect of the final copies of the following documents namely formal reports, formal soil investigation reports, specifications, feasibility reports, bills of quantities, material lists, minutes of site meetings and final accounts. The cost of printed hard covers shall only be paid in respect of documents which will be made available to the public such as bills of quantities and specifications or where provision of hard covers is specifically approved.

The typing of correspondence, appendices and covering letters are deemed to be included in the value based fees and time based fees paid.

C2.1.6.3 Drawing duplication

(a) For drawing duplication the standard rate as set out in Table 2 in the "Rates for Reimbursable Expenses" may be claimed **or** may be claimed according to the provisions as in (b) or (c) below.

(b) If the Service Provider undertakes the duplication of drawings, using his own duplication equipment, he shall be paid the actual cost incurred on condition that it is not higher than the lowest of three quotations of local firms doing drawing duplication in his locality. Such quotations must accompany his account.

(c) If the Service Provider does not undertake his own drawing duplication, he shall be paid the lowest of three quotations of local firms doing plan printing in his locality. Such quotations must accompany his account.

(d) Should there not be three firms doing drawing duplication in his locality, it must be mentioned on his account and the available quotation(s) must then accompany the account.

(The cost of providing all polyester negative prints required to form part of the original set of drawings, as-built drawings including computer assisted drawing records for all facets/disciplines involved in the project are included in the tendered fees and will not be reimbursed separately.)

C2.1.6.4 Forwarding charges

(a) Only the charges in respect of the forwarding of parcels by courier or air freight on special request by the Employer will be refunded, provided that such charges will not be refunded if the request had been made as a result of a delay caused by the Service Provider.

(b) The cost of postage, facsimile transmissions, telephone calls, e-mails, etc, is deemed to be included in the value based fees and time based fees paid.

C2.1.7 Travelling and subsistence arrangements and tariffs of charges

Notwithstanding the ruling in C2.1.2.4 above (regarding disbursements and travelling expenses which will not be paid separately), when the Service Provider is requested in writing by or obtained prior approval in writing from the Employer to attend specific meetings at any of the Employer's offices or any extraordinary meetings on site or elsewhere, he will be remunerated according to the provisions under C2.1.7.1 to C2.1.7.5 herein.

C2.1.7.1 General

The most economical mode of transport is to be used taking into account the cost of transport, subsistence and time. Accounts not rendered in accordance herewith may be reduced to an amount determined by the Employer.

As the tariffs referred to hereunder are adjusted from time to time, accounts must be calculated at the tariff applicable at the time of the expenditure.

Where journeys and resultant costs are in the Employer's opinion related to a Service Provider's malperformance or failure, in terms of this Contract, to properly document or co-ordinate the work or to manage the Contract, no claims for such costs will be considered.

C2.1.7.2 Travelling time

Fees for travelling time are as set out in Table 8 in the "Rates for Reimbursable Expenses".

Fees are payable for travelling time at the tariff, as set out in C2.1.3.5 Time charges for work done under a value-based fee. Travelling time will be fully reimbursed.

C2.1.7.3 Travelling costs

Fees for travelling costs are as set out in Table 3 in the "Rates for Reimbursable Expenses".

Travelling costs will be refunded for the full distance covered per return trip measured from the office of the Service Provider appointed.

Compensation for the use of private motor transport will be in accordance with the Government tariff for the relevant engine swept volume, up to a maximum of 3000 cubic centimetres, prescribed from time to time and as set out in Table 3 in the "Rates for Reimbursable Expenses".

C2.1.7.4 Hired vehicles

In cases where use is made of hired vehicles, the most economical sized vehicle available is to be used but compensation shall nevertheless be restricted to the cost of a hired car not exceeding a capacity of 1300 cc. Where use of a special vehicle is essential (e.g. four track or minibus to accommodate more people), prior approval in writing must be obtained from the departmental project manager.

C2.1.7.5 Subsistence allowance

The subsistence allowances are as set out in Tables 4 and 5 in the "Rates for Reimbursable Expenses".

Only actual costs are payable in respect of absence from office of less than 24 hours.

Should the daily tariff as set out in Table 4 be inadequate, substantiated actual costs plus a special daily allowance as shown in Table 5 for incidental expenses, may be claimed. It must be noted that claims may only be according to Table 4 or Table 5. Accommodation should be limited to the equivalent of a three-star hotel and no alcoholic beverages or entertainment costs may be claimed for.

C2.2 Activity Schedule

C2.2.1 Activities

C2.2.1.1 The services as defined in the C3 Scope of Services are required. The activity schedule below lists the normal services as defined in '2021 ECSA-Scope of Engineering Servicers and Tariff of Fees, (appendix C), clause 3 and as further defined in C3 Scope of Services, as well as additional services as defined in C3 Scope of Services, of this document. (The clause references refer to the corresponding clauses in the '2021 ECSA-Scope of Engineering Servicers and Tariff of Fees

C2.2.1.2 The estimated normal fees have been calculated using the '2021 ECSA-Scope of Engineering Servicers and Tariff of Fees, (appendix C), by applying the applicable fee scale given in clause 4.2.1 (1)-(2) for an engineering project or clause 4.2.2 (1) for a building project, to determine the basic fee and by multiplying the basic fee by the applicable multiplication factor given in clause 4.2.1 (4) or clause 4.2.2 (2) respectively. The **cost of the works** and the values used to determine the multiplication factors are defined in C 3.2.2.3.

No allowance has been made in the estimated normal fees below for the additional services in C2.1.3.6 that have been specified to be included in the normal fees. The tenderer shall make provision for the cost of the additional services that are to be included under normal services by adjusting the percentage tendered in column (b).

C2.2.1.3 The services are to be provided in stages and the proportioning of the fee for normal services over the various stages shall be as set out in '2021 ECSA-Scope of Engineering Servicers and Tariff of Fees, (appendix C), clause 4.2.8.

C2.2.1.4 The tenderer must make provision for all activities necessary for the execution of the service as set out in C3 Scope of Services.

C2.2.2 Activity Schedule for Value Based Fees

ACTIVITY SCHEDULE FOR VALUE BASED FEES

Tenderer's Tender for Value Based Fees

Fee for Planning, Studies, Investigations and Assessments Reports as specified in C3.2.2.1.1

Description	Unit	Quantity	Rate	Amount
Feasibility study	Sum	-		R
Social facilitation	Sum	-		R
Business plan	Sum	-		R
Total				R

Fee for Normal Services inclusive of certain additional services as specified in C3.2

		(a) Estimated normal fees	Unit	(b) Percentag e of normal fees tendered	(a)x(b) Financial Offer by Ten- derer for Value Based Fees
Latest estimate of the construction cost for the civil works.					
CONSTRUCTI ON OF A NEW IRRIGATION SCHEME	R 62 000 000.00	R 6 230 360.00	%		= R

Additional Services – C3.3

Description	Quantity	Unit	Rate	Amount
A direct Sub-consultant, to be appointed by the service provider, for: Full Assessment Environmental Impact Assessment Process and Environmental Management Requirements for the Site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Ecological assessment studies Requirements for the Site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Heritage impact assessment studies Requirements for the Site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Wetland and Biodiversity assessment studies Requirements for the Site identified in C3.2.2.1.6	1	No		= R

A direct Sub-consultant, to be appointed by the service provider, for: Water resource assessment studies Requirements for the Site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Water Use Licence Application/s for the site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Specialist Study Requirements for the Water Use Licence & Basic Assessment Environmental Impact Assessment Processes for the site identified in C3.2.2.1.6	1	No		= R
A direct Sub-consultant, to be appointed by the service provider, for: Independent Environmental Control Officer (ECO) monitoring requirements on a monthly basis for the duration of the construction and rehabilitation phases of the project for the Site identified in C3.2.2.1.6	1	No		= R
As direct sub-consultant, to be appointed by the Service Provider, for: Engineering survey of the site identified in C3.2.2.2, including benchmark height, contours, existing structures / services / topographical detail and verification of corner peg positions	1	No		= R
As direct sub-consultant, to be appointed by the Service Provider, for: geotechnical investigation, complete with test results and foundation recommendations, of the site identified in C3.2.2.1.6	1	No		= R
Act as an "agent" of the Client to undertake duties falling under the Occupational Health and Safety Act, 1993 (act No. 85 of 1993) and the Construction Regulations in terms thereof, on behalf of the Client.	1	No		= R

Soils survey refer to C3.2.2.1.6	310	ha		
Level 3 construction monitoring	18	Months		
Provisional sum for typing, printing and duplicating work in respect to C2.1.2.3.	Prov sum	-	-	= R 80 000.00
Sub-total				= R
Add Contingencies 10% (4)				= R
Sub-total				= R
Add VAT @ 15% (6) X current rate of VAT				= R
<u>TOTAL FINANCIAL OFFER FOR VALUE BASED FEES</u> (6+7)				= R

- NOTE:** 1. Total Financial Offer for Value Based Fees **must be carried over to C1.1 Form of Offer and Acceptance**, if this tender is for value-based fees. Failure to carry this over to the Form of Offer and Acceptance **will render the tender non-responsive**.
2. Remuneration for value-based appointments will be calculated as determined in C2.1.2 (i.e. the percentage of the normal fee tendered multiplied by the value fee scale *vis-à-vis* the actual cost of construction). The percentage of the normal fee shall apply to each stage for services provided in stages. In terms of C2.1.2.4, time spent on travelling, as well as any other travel related expenses (such as travelling costs and subsistence allowances) will not be remunerated – except as provided for in C2.1.7.
3. A construction duration of 18 months should be used for tender purposes. The actual period of construction will be calculated by the successful Service Provider and approved by the Department after the completion of project scoping and design. The tendered rates for normal services will however remain fixed irrespective of the final construction period.

C3: SCOPE OF SERVICES

C3.1 Employer's objectives

This tender is for:

A Service Provider performing Civil and/or Agricultural engineering work on an **engineering project**.

C3.2 Description of the Services

C3.2.1 Services

The general descriptions of the services required are as defined in the Guidelines for Services and Processes and Estimating Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000), (appendix C).

Specific services required are set out in Section C3.3 Extent of Services as well as in the most recent publication of the Departmental: Manual for Civil Consulting Engineers. Should there be any discrepancies between this Tender Document and the Manual for Civil Consulting Engineers, the former shall take precedence.

C3.2.2 Project description

C3.2.2.1 Background

3.2.2.1.1 Bulwer cluster project is situated at Dr Nkosazana Dlamini Zuma Local Municipality in ward 11, 12 and 14, of various villages. They were established and registered in 2014 by a group of 84 members; for the purpose of minimizing poverty in area through growing and trading with grains.

Bulwer Cluster is made up by six enterprises coming from Dr Nkosazana Dlamini Zuma local municipality. The total number of members participating to this project is 84 (see cooperative

The scope of the project will only deal with the development of the 310 ha.

Scope

The Department of Agriculture and land Reform and Rural Development wishes to appoint a suitably qualified and competent Service Provider who is a professional Civil Engineering and/or Agricultural Engineering practitioner, to undertake the following services, (referred to as Planning, Studies, Investigations & Assessments Reports and Normal Services in the: Guideline Professional Fees (Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 46 of 2000) GOVERNMENT GAZETTE, 26 March 2021

1. Planning, Studies, Investigations and Assessments Reports -These services, as indicated below, relate to carrying out studies and investigations as well as the preparation and submission of reports embodying preliminary proposals or initial feasibility studies.

- Consultation with the client or client's authorized representative.
- Inspection of the site of the project.
- Preliminary investigation, route location, planning, and a level of design appropriate to allow decisions on feasibility.
- Consultation with authorities having rights or powers of sanction as well as consultation with the public and stakeholder groups.
- Advice to the client as to regulatory and statutory requirements, including environmental management and the need for surveys, analyses, tests and site or other investigations, as well as approvals, where such are required for the completion of the report.

- Searching for, obtaining, investigating, and collating available data, drawings and plans relating to the works.
- Investigating financial and economic implications relating to the proposals, feasibility studies and/or option analysis and recommendations.

2 Social facilitation -To facilitate the compilation of a business plan, it is expected that formal consultation with the intended beneficiaries and affected stakeholders would occur. This may take the format of a Participatory Rural Appraisal (PRA) or other approved methodology. Report on each of the site chosen is to be compiled with sufficient detail to facilitate the business planning process. A minimum guide to the content of the report is listed hereunder. The following activities/studies are to be conducted/compiled as part of the planning:

2.1 A Status Quo Report on each of the site chosen is to be compiled with sufficient detail to facilitate the business planning process. A minimum guide to the content of the report is listed hereunder.

2.1.1 Social and Institutional arrangements

- A list of all representative bodies/ registered entities
- Are they functional and fully representative of all farmers?
- A Skills Analysis of Farmers and Entities.

2.1.2 Production

- What are the current Production methods?
- Current Crops yields?

2.1.3 Marketing

- Where are the crops being sold?
- What are the profits generated?
- What are the general market trends for the crops being produced?

Deliverable: A Status Quo report of each of the sites

3 Business Plan - A detailed business plan is to be developed with a 'bottom up' approach that would in detail be comprised of the following:

- Consultation
- Feasibility Assessment leading to strategy development and recommendations
- Implementation Plan

Deliverable: A detailed report outlining all the consultations sessions held with attendance registers, minutes of meeting etc.

3.1.1 Consultation

It is important that a guiding strategy be developed that would ensure that the objectives of the initiative are considered.

3.1.2 Feasibility Assessment leading to strategy development and recommendations

The viability study should at the least comprise of the following aspects:

- A detailed analysis of the agricultural potential of all the irrigation schemes with regards to the various crops that may be planted.
- An investigation into the current cropping and marketing practices undertaken by the communal farmers and the feasibility and practicality thereof
- An analysis of the general market conditions in relation to the potential crops. Identification and analysis of 'niche' areas and opportunities.
- An analysis of the economic viability of a spectrum of crops

- A recommendation on the different crops to be planted on the different schemes, based on the consultation process and the results of the previous assessments. The report should include aspects of production and marketing.
- An investigation into the possible types of management structures that would be suited to each of the schemes taking into consideration all local the dynamics. The report should end with a specific recommendation.

Deliverable: A detailed feasibility assessment as described above.

3.1.3 Implementation plan

The viability assessment report will be presented to the DALRRD and beneficiaries for purposes of approval and adoption, and once adopted would form the basis of an implementation plan. A detailed implementation plan is to be developed that will comprise of the following sub plans: (possible section titles have been added).

3.1.3.1 Management Plan

- Entities to be created/ registered including but not limited to – creation of oversight body, registration of primary and secondary co-ops
- Development of rules/ constitutions including all issues relating to membership; governance.
- Daily operations management

3.1.3.2 Production Plan

- Annual production plan per area per irrigation scheme
- Identification of potential strategic partner aligned with the Department policy in this regard.
- Detailed specification of all machinery and equipment required for production
- Detailed specifications for all inputs required including seed, fertiliser etc.
- Identify all required infrastructure and provide for the designs

3.1.3.3 Marketing Plan

- Identification of potential buyers (including government departments)
- Supply agreements

3.1.3.4 Business Model

- Operating finance
- Revenue collection
- Supplier agreements
- Leasing agreements

3.1.3.5 Operations and Maintenance Plan

3.1.3.6 Training Plan

- Management Training
- Production training
- Marketing
- Maintenance

3.1.3.7 Beneficiation. Develop a plan that would identify potential opportunities for value adding activities including beneficiation and agro-processing. Identify all required infrastructure.

Deliverable: A detailed Implementation plan with sufficient information to enable the successful implementation of the project.

- C3.2.2.1.2 Subjected to the outcome of the feasibility study, social facilitation and business plan the go-ahead will be given for the Survey, Design, Specification and Bill of Quantities of the lands best suited for irrigation.
- C 3.2.2.1.3 The obtaining of Environmental, Water User Rights/ Access/ Licence, change of use of land and Electrical Connections Approvals for lands that have not been utilized for cropping before.
- C 3.2.2.1.4 Assist the Department with the procurement of suitable service providers (contractors) to undertake the supply of materials/equipment, and implementation of the approved irrigation scheme design.
- C 3.2.2.1.5 The undertaking of project co-ordination and management of contractors who will be responsible for the construction of the irrigation scheme including, bush clearing, access road construction, earth works, trenching and installation of piping as well as the installation of all electrical connections, payment of deposits, and installation of weirs, pumps, reservoirs, etc.
- C 3.2.2.1.6 The successful Service Provider shall also be required to render or facilitate the rendering of the following Additional Services as part of his duties:
- Ensure compliance with the requirements of the National Environmental Management Act (NEMA) in terms of the preparation and submission of a Basic Assessment Report (BAR) and Environmental Management Plan (EMP) in terms of the NEMA: Environmental Impact Assessment Regulations of 2014 to obtain a decision on Environmental Authorisation for the project. During the construction phase the Service Provider must also make provision for Independent Environmental Control Officer (ECO) monitoring requirements on a monthly basis for the duration of the construction and rehabilitation phases of the project.
 - Ensure compliance with the requirements of the National Water Act in terms of the preparation and submission of the necessary Water Use Licence Application/s for the project. These licences may include but are not limited to abstraction rights or activities which may involve the alteration of the beds, banks or functioning of a watercourse or wetland system.
 - Act as an “agent” of the Client to undertake duties falling under the Occupational Health and Safety Act, 1993 (act No. 85 of 1993) and the Construction Regulations in terms thereof, on behalf of the Client.
 - Detailed topographical survey of the study area for design purposes by a Registered Professional Land Surveyor
 - Comprehensive Geotechnical Investigations, including soil testing, drilling, etc to ascertain engineering characteristics of the in-situ material for design purposes by a Registered Professional Specialist Geotechnical Engineer.
 - Soil profile description by auger holes for each horizon at 1 per 4 ha (200x200m) x 1.5 m deep, of which every 4th auger hole will be replaced by a 1.5m deep test pit (1 per 16 ha) on a grid or selected for best interpolation of results.
 - Lab tests. Selected from soil profiling for distinguishable soil forms and series, with minimum one set of tests for each horizon for each test pit (1 per 16 ha). Selected from soil profiling for distinguishable soil forms and series, with minimum one set of tests for A Horizon and soil at 1.5m depth for each test pit and auger hole. (Test Texture analysis and Chemical analysis to evaluate the suitability for irrigation of the tested area.)
 - Full time Construction monitoring Level 3, on site during the construction phase in accordance with the stipulations of ECSA.
- C 3.2.2.1.7 The required Service Provider should be a registered Professional Engineer with the Engineering Council of South Africa (ECSA) and must demonstrate relevant experience in line with the

proposed scope of works. In the case where a Service Provider is a company/close corporation/partnership, at least 51% of the shares must be held by directors/members/partners who are registered professionals with ECSA.

C3.2.2.2 Location of the Project

The proposed construction is located at Dr Nkosazana Dlamini Zuma Local Municipality in ward 11, 12 and 14, of various villages

C3.2.2.3 Project Cost Estimate

The estimated construction costs for the project is R 77 500 000.00 including Preliminaries and General, contingencies and VAT has been used in the estimation of normal fees. The successful service provider must ensure that the construction budget for this project does not exceed the available budget of R 75 500 000.00 inclusive of VAT without acceptable motivation and approval by the Employer.

C3.2.2.4 Project Programme

The service provider is expected to complete all planning work including feasibility study, business plan within 5 months of appointment. Design work, including the compilation of construction bid documents, should be completed within 8 months of appointment. This will include the final submission of EIA (Basic Assessment) and WULA applications. appointment (bid document a template with complete tender document will be provided) An allowance of 3 months should be made for the department to appoint the construction contractors.

The final programme for the project in the form of a GANT chart, indicating overlaps between various tasks, shall be prepared by the appointed Service Provider, and approved by the Department. The programme shall be in sufficient detail to monitor the Service Provider's performance.

The duration of construction will also be determined by the Service Provider once the project scoping and design have been completed.

No agreed milestones may be extended beyond the timeframes outlined in the programme without acceptable motivation and approval by the Department.

C3.2.2.5 Information available from Employer

No information available with the employer for the proposed irrigation scheme. The Service Provider must make arrangements to collect any other data and information that is required to complete its designs. The Service Provider must also make provision in its pricing for any extra cost that would be incurred in obtaining any other information and data.

C3.2.2.6 Other Contracts on Site

There will be no other contracts that will run concurrently with this contract that the Employer is aware of.

Any other contracts not anticipated by the Employer shall be brought to the attention of the Employer and coordinated by the Service Provider. The Service Provider shall duly inform the Employer of any impacts associated with such contracts.

C3.2.2.7 Reporting Requirements and Approval Procedure

The Service Provider shall meet with the Employer as and when reasonably instructed by the Employer to discuss and minute progress of the services. Notwithstanding any other requirements, the Service Provider shall submit a bi-weekly progress report to the Employer in a format approved by the Employer.

All project milestones including associated reports are to be approved by the Departmental Project Manager prior to proceeding to the next stage of the project. Budgets, cashflows and execution programmes are also subject to the approval of the Departmental Project manager.

C3.3 Extent of the Services

The following services as defined in the Guidelines for Services and Processes and Estimating Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000), clause 3, are required: (The clause references refer to the corresponding clauses in the Guidelines for Services and Processes and Estimating Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000).)

C3.3.1 Planning, Studies, Investigations and Assessments Reports

C3.3.2 Normal Services (clause 3.2) including:

- Clause 3.2.1 Inception Stage
- Clause 3.2.2 Preliminary Design: Concept and Viability
- Clause 3.2.3 Detail Design Stage
- Clause 3.2.4 Documentation and Procurement Stage
- Clause 3.2.5 Contract Administration and Inspection Stage
- Clause 3.2.6 Close-Out Stage

C3.3.3 Additional Services (clause 3.3) including:

C3.3.3.1 Clause 3.3.1 Additional Services pertaining to all Stages of the Project

This contract requires the following additional services to be undertaken:

- Clause 3.3.1 Surveys and geotechnical investigations
- Clause 3.3.2 Construction Monitoring
- Clause 3.3.3 Occupational Health and Safety Act Services
- Clause 3.3.4 Quality Assurance System
- Clause 3.3.5 Lead Consulting Engineer
- Clause 3.3.6 Principal Agent of the Client

Provision has been made in the pricing schedule for the items above.

Specialist Studies associated with the legislated Basic Assessment Environmental Impact Assessment (EIA) & Water Use Licence Application are likely to include the following:

1. Terrestrial Biodiversity Assessment;
2. Riparian & Wetland Delineation and Functionality Assessment including Risk Matrix;
3. Wetland Rehabilitation Plan;
4. Storm water Management Plan;
5. 1:100 Year Flood line Assessment;
6. Heritage Impact Assessment;
7. Agricultural Feasibility Assessment.
8. Desktop Geohydrological Assessment; and
9. Water Resource Assessment including desktop Environmental Flow Requirement for water abstractions.

Provision has been made in the pricing schedule for the items above.

C3.3.2.2 Clause 3.2.2 Construction Monitoring

(i) General

The consultant must make available construction monitoring staff for Level 3, (Full- time), monitoring.

The competence and experience of the tenderer's proposed site personnel shall be an integral part of the Employer's tender evaluation process. On acceptance of their tender by the Employer, the Service Provider shall not be permitted to offer alternative core personnel unless such alternative offer is as a result of a bona fide unforeseen circumstance. In such an event, the Employer shall only accept alternative personnel possessing at least similar qualifications and experience to those persons proposed in the tender.

The Employer shall be entitled to instruct the Service Provider to remove from the Works any person employed by the Service Provider on or about the execution of the Works who, in the opinion of the Employer, misconducts himself or is incompetent or negligent in the proper performance of his duties, or whose presence on site is otherwise considered by the Employer, on reasonable grounds, to be undesirable.

(ii) Accommodation

Appropriate housing for the site staff shall be provided by the Service Provider. Site staff shall be housed as near to the location of the Works as may be practically possible. No separate payment will be made for the accommodation of site staff and rates tendered for the relevant site staff shall include full compensation for all accommodation costs.

(iii) Establishment of site office

Provision and maintenance of a site office building, all related services and supply of office furniture will be made under the Works Contract. The Service Provider shall however provide all office equipment and incidentals required for carrying out administration, supervision and inspection of the Works and shall include:

- a) Cell phones, including rental and call charges.
- b) All safety equipment for supervisory staff in accordance with the OHS requirements (e.g. safety jackets, boots etc).
- c) All equipment including copier rental, fax machine, consumables, stationary, digital camera etc.
- d) All necessary computer hardware, software, printers and modems and associated consumables.
- e) Any other items necessary for the capture of all relevant data required for administering the contract and reporting to the Employer.

One landline, including rental and call costs for work related office and fax usage shall be provided through the Works Contract.

(iv) Transport for site staff

The Service Provider shall provide sufficient appropriate vehicles on site for site staff.

C3.3.2.3 Clause 3.3.3 Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)

The Service Provider shall act as an "agent" of the Employer in rendering Occupational Health and Safety services as contemplated in the Construction Regulations to the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

The Service Provider under this contract shall however make provision for the incorporation of the Occupational Health and Safety specifications, compiled by others, in the tender documentation, if applicable.

It is a firm requirement that in the designs, planning and supervision of the execution of the work done under the contract resulting from this tender, all applicable regulations and stipulations under

OH&SA, (Act 85 of 1993) including regulations and codes of practice etc are complied with and that the final product shall be in full compliance with said legislation, standards etc.

Furthermore, the Service Provider shall be fully responsible for the compliance of his operation, equipment as well as staff and persons under his supervision on site whether by invitation instruction or otherwise and regardless of the capacity, purpose and relationship of any such persons to the appointment, to all aspects of all applicable regulations and stipulations under OH&SA, (Act 85 of 1993).

C3.3.3 Additional Services (Other)

C3.3.3.1 The Service Provider shall also prepare land surveys and geotechnical investigations, specifications of which will be approved by the Employer.

C3.3.3.2 The Employer may order duties that fall outside the scope of the project as tendered. Any such additional services that may be required will be remunerated as set out in the Pricing Data.

C3.4 Use of reasonable skill and care

It will be expected of the Service Provider to apply reasonable skills and due diligence in the execution of the duties stipulated in this document which shall include *inter alia* the following:

Although the Service Provider's documents may be scrutinised by the Employer, this shall in no way relieve him of his professional responsibility for the proper and prompt execution of his duties. The Employer shall also be entitled to have any documentation or calculations verified by Others. In the event of malperformance, default or negligence, the Employer shall have the right to claim compensation or damages and set off such against any amount payable.

During assessment of any existing facilities, which may have a direct bearing on the Project, the Service Provider shall determine deficiencies with such facilities in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), the SANS 10400, etc. and recommend measures to rectify those during the project execution phase.

The departmental project manager shall be notified by the Service Provider and his personnel of any transgression of *inter alia* the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and environmental legislation during the Service Provider's operation pertaining to the Contract regardless of who may be involved.

C3.5 Role Players

It will be required of the Service Provider to co-operate with the following role players:

Local, provincial, and national authorities, statutory bodies, governmental departments, Others, as may be required from time to time, including the client department/end user(s).

C3.6 Brief

C3.6.1 Target dates and times

The Service Provider will be expected throughout to give preference to the execution of the work involved in this commission.

The work of all Service Providers will be co-ordinated by the principal agent. All work is to be performed by the persons listed as Key Persons and persons under their supervision and further be executed as described in the Programme according to clause 3.14 of the Contract Data (and/or PEP according to the same clause, if applicable).

During the construction phase of the Project it will be expected of the principal agent to obtain a construction programme from the main contractor to continuously monitor his progress against that programme for compliance and to take whichever steps have been described in the relevant manual and the Working Guideline for Project Managers. This should be done in collaboration

with the rest of the professional team, should the progress not be according to the said programme.

- C3.6.2 Reporting requirements
Notwithstanding any other requirements as listed elsewhere, the Service Provider shall submit a monthly report indicating progress of the Services.
- C3.6.3 Local content
It is the policy of the Employer to give preference to materials and equipment of South African manufacture. The Service Provider is to ensure that, wherever feasible, designs are based on locally manufactured equipment and materials which can meet requirements at competitive prices.
- C3.6.4 Design innovation
Given the need for energy efficiency and environmental sustainability in the built environment, each member of the professional team, is required, wherever possible and applicable, to demonstrate design innovation in all aspects of the Service towards "green" design solutions. Aspects to be considered and incorporated in all new building and/or maintenance designs are, *inter alia* but not limited to,
- a.) sustainable development
eg. in building form, material choice, construction detailing and methods, recycling ability;
 - b.) energy efficiency
eg.
 - i) passive design methods towards energy conservation and consumption: building orientation, exploitation of nature's inherent energy sources),
 - ii) energy efficient solutions and installations for lighting, ventilation, cooling, heating, etc (eg. energy efficient light fittings),
 - iii) alternative or renewable energy sources where practical/feasible/economical;
 - c.) water conservation/saving/re-use methods; and
 - d.) environmental friendliness (eg. respect for natural habitat, blending of building with site/ environment/surrounding fabric, positioning of buildings, consideration of neighbouring sites' access to sun, wind, view, etc).
- C3.6.5 Final disposal of documents
Upon approval and finalisation of the final account of projects requiring a security clearance, it is a requirement that the Service Provider forward to the Employer all documents relating to this service. The same may also be requested on projects not requiring a security clearance.

C3.7 Applicable legislation and standards

This section applies to legislation emanating from national and provincial governments as well as that of any local authorities in whose area of jurisdiction the subject of the appointment falls and which has a bearing on the activities and facilities under this appointment.

All the applicable legislation, which do not specifically allow discretion in respect of compliance by the State, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary. (Refer *inter alia* to Section 41 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)).

Should any applicable legislation allow discretion in respect of compliance by the State, it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the appointed professional team by the departmental project manager.

The Service Provider undertakes to ensure that his actions and outcome thereof including, but not limited to, the facilities to be affected by the Service shall be in accordance with all relevant legislation and upon delivery, will function as required by said relevant legislation. The Service Provider's actions and the outcome thereof will in no way be detrimental to the health and safety of the occupants or persons present therein or in the vicinity thereof. Similarly it must not be detrimental to any aspects of the environment in its structure or operation if operated as specified in operation manual(s). The relevant legislation meant herein, as amended, consist of *inter alia* the following, but not limited to:

- Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);
- Construction Industry Development Board Act, 2000 (Act 38 of 2000);
- Council for the Built Environment Act, 2000 (Act 43 of 2000);
- Electricity Act, 1987 (Act 41 of 1987);
- Engineering Profession Act, 2000 (Act 46 of 2000);
- Environmental Conservation Act, 1998 (Act 107 of 1998);
- Fire Brigade Services Act, 2000 (Act 14 of 2000);
- Local Government Municipal Systems Act, 2000 (Act 32 of 2000), municipal by-laws and any special requirements of the local service supply authority;
- National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);
- National Environmental Management Act, 1998 (Act 107 of 1998);
- National Heritage Resources Act, 1999 (Act 25 of 1999);
- National Water Act, 1998 (Act 36 of 1998);
- Occupational Health and Safety Act, 1993 (Act 85 of 1993);
- Telecommunications Act, 1996 (Act 103 of 1996);
- Water Services Act, 1997 (Act 108 of 1997) and general authorizations;
- the latest issue of SANS 10142: "Code of Practice for the Wiring of Premises";
- the Regulations of the local Gas Board, where applicable and
- all regulations promulgated under the above Acts.

This will be a continuous process throughout the appointment, which will manifest itself during the following phases:

- development of plans and documentation;
- supervision of any Service Providers under the appointment;
- ensuring compliance of the end product;
- compiling and issuing of Instruction/Operational Manuals indicating *inter alia* what the legal and safety requirements entail for the user(s)/operator(s) of the facilities;
- providing instruction to the intended users/operators.

The Service Provider accepts full and complete responsibility (both contractually and/or in delict) regarding compliance with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) for his acts and omissions as well as those of his employees and indemnifies the Employer against any legal action in this regard.

The Service provider undertakes to ensure that the requirements of the Occupational Health and Safety Act, 1993 will similarly apply to the agreement with any sub service providers inclusive of indemnifying the Employer against any legal action regarding the actions and/or omissions by them.

C3.9 Access to land/buildings/sites

Access to the land/buildings/sites shall be negotiated in consultation with the departmental project manager.

C3.10 Software application for programming

The Service Provider must avail himself of software to be used in the Project documentation for compatibility with other Service Providers as well as the Employer. Specific requirements for compatibility are specified in the relevant manuals.

C3.11 Security clearance

It is an explicit condition of this agreement that partners, directors and/or the members of staff who will have insight into the planning of projects requiring security clearance, be kept to a minimum and that such persons will not object to being submitted to a security clearance, if the Employer so requires.

If the latter is applicable, the necessary forms will accompany this tender or be provided to the Service Provider at any stage thereafter. These forms must be completed, if attached, and returned with the tender. It is important to furnish information which is complete in every respect.

Should the authority responsible for the clearance, for security reasons not be satisfied with the classification obtained of any of the staff members of the Service Provider, it will be a further condition of this appointment that none of such staff members be involved with any aspect of the Project.

All documents pertaining to these projects must be stored in a safe place when not in use so as to ensure that the level of security of the projects is maintained.

The Employer will not accept liability for any costs in this regard.

FINGER PRINTS (except Defence projects)

Persons of whom security clearance is required can obtain a finger print form SAP 91(a) from any police station. Kindly ensure that the police official responsible for taking the finger prints certifies the form since non-certification will result in the form being unacceptable.

C3.12 Forms for contract administration

All forms required during contract administration, called PRM forms, are available on the Employer's website at <http://www.ecsa.gov.za/> under "Consultants Guidelines" item 14. The agreement and conditions of contract to be entered into with the main contractor shall be the GCC 2004 contract.

C3.13 Condition to accept unregistered persons with suitable built environment qualifications on secondment

It is an express term of the contract that the Service Provider, after award of tender, accept unregistered, suitably qualified (built environment) persons in his office for the purpose of exposing the latter to the full extent of professional work, or as may be required according to specific circumstances, in order to gain experience which can be presented to the relevant Council for consideration towards professional registration. The secondment of such unregistered persons will be negotiated with the Service Provider in terms of numbers, periods of training and extent of professional work opportunity to be afforded. The conditions of secondment will be the subject of a separate Memorandum of Understanding with the Service Provider which will serve as an annexure hereto. Any secondment arrangements will cease upon the professional registration of the seconded person or as agreed on and so included in the aforesaid Memorandum of Understanding. The responsibility for salaries of seconded persons will remain with the Employer, but responsibility for operational expenses, necessary for the execution of the work, will vest with the Service Provider, all of which will be dealt with in the Memorandum of Understanding.

C4: SITE INFORMATION

(Refer to C3.2.2.2 above.)

F.1 General

F.1.1 Actions

F.1.1.1 The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

F.1.1.2 The employer and the tenderer and all their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

- Note:*
- 1) *A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.*
 - 2) *Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.*

F.1.1.3 The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

F.1.2 Tender Documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

F.1.3 Interpretation

F.1.3.1 The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

F.1.3.2 These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

F.1.3.3 For the purposes of these conditions of tender, the following definitions apply:

- a) **conflict of interest** means any situation in which:
 - i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially;
 - ii) an individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or

- iii) incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.
- b) **comparative offer** means the price after the factors of a non-firm price and all unconditional discounts it can be utilised to have been taken into consideration;
- c) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;
- d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;
- e) **organization** means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body;
- f) **functionality** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs.

F.1.4 Communication and employer's agent

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non- receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

F.1.5 Cancellation and Re-Invitation of Tenders

F1.5.1 An organ of state may, prior to the award of the tender, cancel a tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received.

F1.5.2 The decision to cancel a tender must be published in the cidb website and in the government Tender Bulletin for the media in which the original tender invitation was advertised.

F.1.6 Procurement procedures

F.1.6.1 General

Unless otherwise stated in the tender data, a contract will, subject to F.3.13, be concluded with the tenderer who in terms of F.3.11 is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

F.1.6.2 Competitive negotiation procedure

F.1.6.2.1 Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of F.3.4, the employer shall announce only the names of the tenderers who make a submission. The requirements of

F.3.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

F.1.6.2.2 All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of F.2.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

F.1.6.2.3 At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

F.1.6.2.4 The contract shall be awarded in accordance with the provisions of F.3.11 and F.3.13 after tenderers have been requested to submit their best and final offer.

F.1.6.3 Proposal procedure using the two stage-system

F.1.6.3.1 Option 1

Tenderers shall in the first stage submit technical proposals and, if required, cost parameters around which a contract may be negotiated. The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data, and in the second stage negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of these conditions of tender.

F.1.6.3.2 Option 2

F.1.6.3.2.1 Tenderers shall submit in the first stage only technical proposals. The employer shall invite all responsive tenderers to submit tender offers in the second stage, following the issuing of procurement documents.

F.1.6.3.2.2 The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of these conditions of tender.

F.2 Tenderer's obligations

F.2.1 Eligibility

F.2.1.1 Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

F.2.1.2 Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the employer's written approval to do so prior to the closing time for tenders.

F.2.2 Cost of tendering

F2.2.1 Accept that, unless otherwise stated in the tender data, the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

F2.2.2 The cost of the tender documents charged by the employer shall be limited to the actual cost incurred by the employer for printing the documents. Employers must attempt to make available the tender documents on its website so as not to incur any costs pertaining to the printing of the tender documents.

F.2.3 Check documents

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

F.2.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

F.2.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

F.2.6 Acknowledge addenda

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

F.2.7 Clarification meeting

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

F.2.8 Seek clarification

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

F.2.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

F.2.10 Pricing the tender offer

F.2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

F.2.10.2 Show VAT payable by the employer separately as an addition to the tendered total of the prices.

F.2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

F.2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

F.2.11 Alterations to documents

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

F.2.12 Alternative tender offers

F.2.12.1 Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

F.2.12.2 Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

F.2.12.3 An alternative tender offer may only be considered in the event that the main tender offer is the winning tender.

F.2.13 Submitting a tender offer

F.2.13.1 Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

F.2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

F.2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

F.2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.6 Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked -financial proposall and place the remaining returnable documents in an envelope marked -technical proposall. Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

F.2.13.8 Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

F.2.13.9 Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.

F.2.14 Information and data to be completed in all respects

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

F.2.15 Closing time

F.2.15.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Accept that proof of posting shall not be accepted as proof of delivery.

F.2.15.2 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

F.2.16 Tender offer validity

F.2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

F.2.16.2 If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period with or without any conditions attached to such extension.

F.2.16.3 Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

F.2.16.4 Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of F.2.13 with the packages clearly marked as -SUBSTITUTEI.

F.2.17 Clarification of tender offer after submission

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

Note: Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.

F.2.18 Provide other material

F.2.18.1 Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

F.2.18.2 Dispose of samples of materials provided for evaluation by the employer, where required.

F.2.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

F.2.20 Submit securities, bonds and policies

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

F.2.21 Check final draft

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

F.2.22 Return of other tender documents

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

F.2.23 Certificates

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

F.3 The employer's undertakings

F.3.1 Respond to requests from the tenderer

F.3.1.1 Unless otherwise stated in the tender Data, respond to a request for clarification received up to five working days before the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

F.3.1.2 Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
- b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
- c) in the opinion of the Employer, acceptance of the material change would compromise the outcome of the prequalification process.

F.3.2 Issue Addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until three days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who drew documents.

F.3.3 Return late tender offers

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

F.3.4 Opening of tender submissions

F.3.4.1 Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

F.3.4.2 Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of his prices, number of points claimed for its BBBEE status level and time for completion for the main tender offer only.

F.3.4.3 Make available the record outlined in F.3.4.2 to all interested persons upon request.

F.3.5 Two-envelope system

F.3.5.1 Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

F.3.5.2 Evaluate functionality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the functionality evaluation more than the minimum number of points for functionality

stated in the tender data, and announce the score obtained for the technical proposals and the total price and any points claimed on BBBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

F.3.6 Non-disclosure

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

F.3.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

F.3.8 Test for responsiveness

F.3.8.1 Determine, after opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender, b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

F.3.8.2 A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

F.3.9 Arithmetical errors, omissions and discrepancies

F.3.9.1 Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with F.3.11 for:

- a) the gross misplacement of the decimal point in any unit rate;
- b) omissions made in completing the pricing schedule or bills of quantities; or c) arithmetic errors in:
 - i) line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or ii) the summation of the prices.

F3.9.2 The employer must correct the arithmetical errors in the following manner:

- a) Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.
- b) If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

F.3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

F.3.11 Evaluation of tender offers

F.3.11.1 General

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

F.3.11.2 Method 1: Price and Preference

In the case of a price and preference:

- 1) Score tender evaluation points for price
- 2) Score points for BBBEE contribution
- 3) Add the points scored for price and BBBEE.

F.3.11.3 Method 2: Functionality, Price and Preference

In the case of a functionality, price and preference:

- 1) Score functionality, rejecting all tender offers that fail to achieve the minimum number of points for functionality as stated in the Tender Data.
- 2) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- 3) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference points system prescribed in paragraphs 4 and 4 and 5 below.

The 80/20 preference point system for acquisition of services, works or goods up to Rand value of R1 million

- 4) (a)(i) The following formula must be used to calculate the points for price in respect of tenders (including price quotation) with a Rand value equal to, or above R 30 000 and up to Rand value of R50 000 000 (all applicable taxes included):

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for comparative price of tender or offer under consideration;

P_t = Comparative price of tender or offer under consideration; and

P_{\min} = Comparative price of lowest acceptable tender or offer.

- (4)(a)(ii) An employer of state may apply the formula in paragraph (i) for price quotations with a value less than R30 000, if and when appropriate:

- (4)(b) Subject to subparagraph(4)(c), points must be awarded to a tender for attaining the B-BBEE status level of contributor in accordance with the table below:

B-BBEE status level of contributor	Number of points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (4)(c) A maximum of 20 points may be allocated in accordance with subparagraph (4)(b)
- (4)(d) The points scored by tender in respect of B-BBEE contribution contemplated in subparagraph (4) (b) must be added to the points scored for price as calculated in accordance with subparagraph (4)(a).
- (4)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

The 90/ 10 preference points system for acquisition of services, works or goods with a Rand value above R 50 million

- (5)(a) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R50 000 000 (all applicable taxes included):

90/10

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for comparative price of tender or offer under consideration;

Pt = Comparative price of tender or offer under consideration; and

Pmin = Comparative price of lowest acceptable tender or offer.

(5)(b) Subject to subparagraph(5)(c), points must be awarded to a tender for attaining the B- BBEE status level of contributor in accordance with the table below:

B-BBEE status level of contributor	Number of points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

(5)(c) A maximum of 10 points may be allocated in accordance with subparagraph (5)(b).

(5)(d) The points scored by tender in respect of B-BBEE contribution contemplated in subparagraph (5) (b) must be added to the points scored for price as calculated in accordance with subparagraph (5)(a).

(5)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

F.3.11.6 Decimal places

Score price, preference and functionality, as relevant, to two decimal places.

F.3.11.7 Scoring Price

Score price of remaining responsive tender offers using the following formula:

$$N_{FO} = W_1 \times A$$

where: N_{FO} is the number of tender evaluation points awarded for price.

W_1 is the maximum possible number of tender evaluation points awarded for price as stated in the Tender Data.

A is a number calculated using the formula and option described in Table F.1 as stated in the Tender Data.

Table F.1: Formulae for calculating the value of A

Formula	Comparison aimed at achieving	Option 1 ^a	Option 2 ^a
1	Highest price or discount	$A = (1 + \frac{(P - P_m)}{P_m})$	$A = P / P_m$
2	Lowest price or percentage commission / fee	$A = (1 - \frac{(P - P_m)}{P_m})$	$A = P_m / P$
^a P_m is the comparative offer of the most favourable comparative offer. P is the comparative offer of the tender offer under consideration.			

F.3.11.8 Scoring preferences

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences. Calculate the total number of tender evaluation points for preferences claimed in accordance with the provisions of the tender data.

F.3.11.9 Scoring functionality

Score each of the criteria and sub criteria for quality in accordance with the provisions of the Tender Data.

Calculate the total number of tender evaluation points for quality using the following formula:

$$N_Q = W_2 \times S_O / M_S$$

where: S_O is the score for quality allocated to the submission under consideration;
 M_S is the maximum possible score for quality in respect of a submission; and
 W_2 is the maximum possible number of tender evaluation points awarded for the quality as stated in the tender data

F.3.12 Insurance provided by the employer

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

F.3.13 Acceptance of tender offer

Accept the tender offer, if in the opinion of the employer, it does not present any risk and only if the tenderer:

- is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- has the legal capacity to enter into the contract,
- is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by

- a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- e) complies with the legal requirements, if any, stated in the tender data, and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

F.3.14 Prepare contract documents

F.3.14.1 If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between the employer and the successful tenderer.

F.3.14.2 Complete the schedule of deviations attached to the form of offer and acceptance, if any.

F.3.15 Complete adjudicator's contract

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

F.3.16 Notice to unsuccessful tenderers

F.3.16.1 Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

F.3.16.2 After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

F.3.17 Provide copies of the contracts

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

F.3.18 Provide written reasons for actions taken

Provide upon request written reasons to tenderers for any action that is taken in applying these conditions of tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

F3.19 Transparency in the procurement process

F3.19.1 The cidb prescripts require that tenders must be advertised and be registered on the cidb i.Tender system.

F3.19.2 The employer must adopt a transparency model that incorporates the disclosure and accountability as transparency requirements in the procurement process.

F3.19.3 The transparency model must identify the criteria for selection of projects, project information template and the threshold value of the projects to be disclosed in the public domain at various intervals of delivery of infrastructure projects.

F3.19.4 The client must publish the information on a quarterly basis which contains the following information:

- Procurement planning process
- Procurement method and evaluation process
- Contract type
- Contract status
- Number of firms tendering
- Cost estimate
- Contract title
- Contract firm(s)
- Contract price
- Contract scope of work
- Contract start date and duration
- Contract evaluation reports

F3.19.5 The employer must establish a Consultative Forum which will conduct a random audit in the implementation of the transparency requirements in the procurement process.

F3.19.6 Consultative Forum must be an independent structure from the bid committees. F3.19.7 The information must be published on the employer's website.

F 3.19.8 Records of such disclosed information must be retained for audit purposes.

Appendix B

STANDARD PROFESSIONAL SERVICES CONTRACT

(July 2015)
(Third Edition of CIDB document 1014)



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PREFACE

The Standard Professional Services Contract has been prepared for use by Employers when they engage firms or individuals (Service Providers) for the performance of knowledge-based expertise provided on the basis of trust.

This document is intended to be used with the procurement documents prepared in accordance with the provisions of SANS 10403: Formatting and Compilation of Construction Procurement Documents

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GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

Contract

The Contract signed by the Parties and of which these General Conditions of Contract form part.

Contract Data

Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract.

Contract Price

The price to be paid for the performance of the Services in accordance with the Pricing Data.

Day

A calendar day.

Defect

A part of the Services, as performed, which does not comply with the requirements of the Contract.

Deliverable

Any measurable, tangible, verifiable outcome, result or item that must be produced or completed;

Employer

The contracting party named in the Contract who employs the Service Provider.

Force Majeure

An event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

Key Persons

Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

Others

Persons or organisations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

Parties

The Employer and the Service Provider.

Period of Performance

The period within which the Services are to be performed and completed, commencing from the Start Date.

Personnel

Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Data

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract Price.

Project

The project named in the Contract Data for which the Services are to be provided.

Scope of Work

The document which defines the Employer's objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

Service Provider

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provide and legally permitted assignees.

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

Start date

The date on which the Services are to commence. as stated in the Contract Data

Subcontractor

A person or body corporate who enters into a subcontract with the Service Provider to perform part of the Services.

2. INTERPRETATION

- 2.1 Unless inconsistent with the context, an expression which denotes :
- a) any gender includes the other genders;
 - b) a natural person includes a juristic person and vice versa;
 - c) the singular includes the plural and vice versa.
- 2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.
- 2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing law

Law governing the Contract shall be the law of the Republic of South Africa.

3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract

Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both).

3.3 Language

3.3.1 The language of the Contract and of all communications between the Parties shall be English.

3.3.2 All reports, recommendations and reports prepared by the Service Provider under the Contract shall be in English.

3.4 Notices

3.4.1 Any notice, request, consent, approvals or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract Data. Such communication shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or one week after having been sent by registered post, or unless otherwise indicated in the Contract Data, when sent by e-mail or facsimile to such Party

3.4.2 A Party may change its address for receipt of communications by giving the other Party 30 Days advance notice of such change.

3.5 Location

The Services shall be performed at such locations as are specified in the Contract Data, and where the location of a particular task is not so specified, at such locations as the Employer may approve.

3.6 Publicity and publication

Unless otherwise stated in the Contract Data, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval by the Employer shall not be unreasonably withheld.

3.7 Confidentiality

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.8 Variations

3.8.1 The Employer may, without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services.

3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.

3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

3.9 Changes to the Contract Price or Period of Performance

3.9.1 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:

- a) a change in legislation takes place in accordance with the provisions of Clause 3.2;
- b) a variation to the Services is made in accordance with the provisions of Clause 3.8;
- c) the Employer or Others do not perform an action, provide access to people, places or things or perform work in accordance with the programme (see Clause 3.15);
- d) the contract is suspended in accordance with the provisions of Clause 8.5;
- e) the contract is restarted following a suspension; or
- f) an event occurs which neither Party could prevent and which prevents the Service Provider from completing the Services or a part thereof

- 3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.
- 3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.
- 3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.

3.10 Sole agreement

The Contract constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall not be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.11 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trade marks and other forms of intellectual property such as copyrights.

3.12 Penalty

- 3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.
- 3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, he may after giving notice to the Service Provider :
- a) terminate the Contract
 - b) complete the Services at the Service Provider's cost.

3.13 Equipment and materials furnished by the Employer

- 3.13.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.
- 3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

3.14 Illegal and impossible requirements

The Service Provider shall notify the Employer immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) provisions for float;
- d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) other information as required in terms of the Scope of Work or Contract Data.

3.15.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.3 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer

and submit such revised programme to the Employer for approval.

3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

3.16.2 The adjustment to the time-based fees shall be equal to:

$$(CPI_n - CPI_s) / CPI_s$$

Where CPI_s = the indices specified in the Contract Data during the month in which the start date falls

CPI_n = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls

4. EMPLOYER'S OBLIGATIONS**4.1 Information**

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

4.2 Decisions

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

4.3 Assistance

4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

- a) authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
- b) provide all relevant data, information, reports, correspondence and the like, which become available;
- c) procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
- d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.2 Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

4.4 Services of Others

The Employer shall, at his own cost, engage such Others as may be required for the execution of work not included in the Services, but which is necessary for the completion of the Project.

4.5 Notification of material change or defect

The Employer shall immediately advise the Service Provider on becoming aware of:

- a) any matter other than a change in legislation which will materially change, or has changed the Services; or
- b) a material defect or deficiency in the Services.

4.6 Issue of instructions

Where the Service Provider is required to administer the work or services of Others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

4.7 Payment of Service Provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

- 5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.2 Exercise of authority

The Service Provider shall have no authority to relieve Others appointed by the Employer to undertake work or services on the Project of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

5.3 Designated representative

Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

5.4 Insurances to be taken out by the Service Provider

- 5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.
- 5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

5.5 Service Provider's actions requiring Employer's prior approval

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

- a) appointing Subcontractors for the performance of any part of the Services,
- b) appointing Key Persons not listed by name in the Contract Data.
- c) any other action that may be specified in the Contract Data.

5.6 Co-operation with Others

If the Service Provider is required to perform the Services in co-operation with Others he may make recommendations to the Employer in respect of the appointment of such Others. The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 14 Days thereof give notice to the Employer.

6. CONFLICTS OF INTEREST

6.1 Service Provider not to benefit from commissions, discounts, etc.

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

6.3 Independence

The Service Provider shall refrain from entering into any relationship which could be perceived as compromising his independence of judgement, or that of Subcontractors or Personnel.

7. SERVICE PROVIDER'S PERSONNEL**7.1 General**

7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.

7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.

- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

The Service Provider shall commence the performance of the Services within the period stated in the Contract Data.

8.2 Completion

- 8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

- 8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

- a) additional Services ordered by the Employer;
- b) failure of the Employer to fulfil his obligations under the Contract;
- c) any delay in the performance of the Services which is not due to the Service Provider's default;
- d) *Force Majeure*; or
- e) suspension.

- 8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.

- 8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

8.3 Force Majeure

- 8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

- 8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

- 8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

- 8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;

- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
 - (d) if the Service Provider becomes insolvent or liquidated; or
 - (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;
- 8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).
- 8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:
 - (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
 - (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
 - (c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
 - (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.
- 8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.
- 8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.5 Suspension

- 8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.
- 8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incident to the prompt and orderly suspension of the Contract.

8.6 Rights and liabilities of the Parties

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

- 9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to

copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

- 9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.
- 9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10. SUCCESSION AND ASSIGNMENT

- 10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.
- 10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases :
 - (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
 - (b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.
- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be subcontracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

- 11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.
- 11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.
- 11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. RESOLUTION OF DISPUTES

12.1 Settlement

- 12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.
- 12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

- 12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.
- 12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.
- 12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.
- 12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

12.3 Adjudication

- 12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.
- 12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.
- 12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed

in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.

- 12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

12.4 Arbitration

- 12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators current at the date the arbitrator is appointed.
- 12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13. LIABILITY

13.1 Liability of the Service Provider

- 13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.
- 13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.
- 13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data, if any.

13.2 Liability of the Employer

The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate delictual right of action against the Employer.

13.3 Compensation

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

- (a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.
- (b) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4 Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 Limit of Compensation

13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

- a) the sum insured in terms of 5.4 in respect of insurable events; and
- b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6 Indemnity by the Employer

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
- b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data. If not otherwise stated in the Pricing Data, the following shall apply:

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.

14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2

shall apply to disputed amounts which are finally determined to be payable to the Service Provider.

- 14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty-four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

15 AMOUNTS DUE TO THE EMPLOYER

Amounts due to the Employer shall be paid by the Service Provider within thirty (30) Days of receipt by him of the relevant invoices. If the Employer does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Service Provider, at the rate stated in the Contract Data, calculated from the due date for payment.

Appendix C

ENGINEERING COUNCIL OF SOUTH AFRICA

Guideline Professional Fees
(Scope of Services and Tariff of Fees for Persons Registered in terms
of the Engineering Profession Act, 46 of 2000)