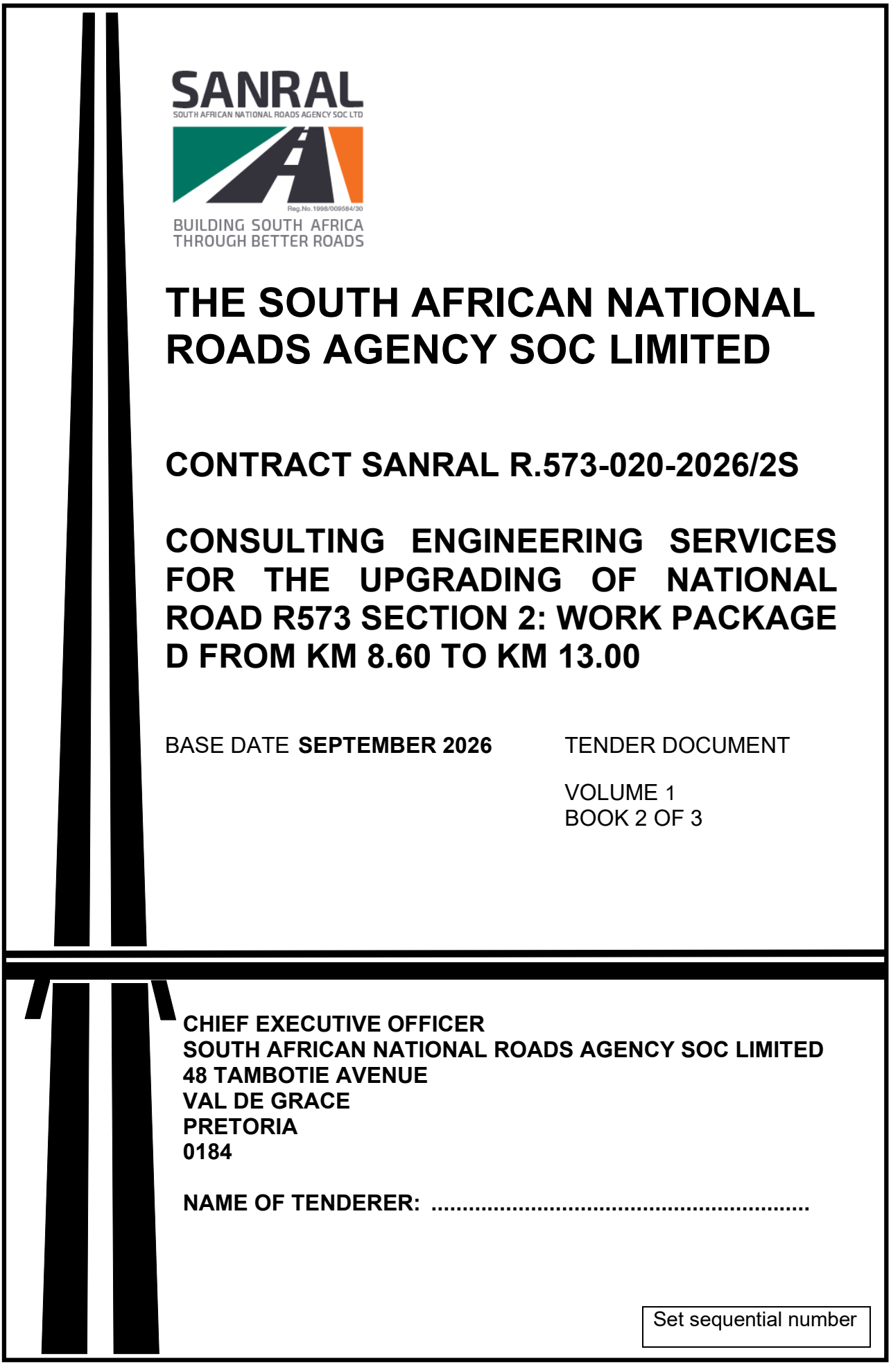


SANRAL
SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD
Reg.No.1998/009584/30
BUILDING SOUTH AFRICA THROUGH BETTER ROADS

THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

CONTRACT SANRAL R.573-020-2026/2S

CONSULTING ENGINEERING SERVICES FOR THE UPGRADING OF NATIONAL ROAD R573 SECTION 2: WORK PACKAGE D FROM KM 8.60 TO KM 13.00

BASE DATE **SEPTEMBER 2026**

TENDER DOCUMENT

VOLUME 1
BOOK 2 OF 3

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

NAME OF TENDERER: .....

Set sequential number

THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

CONTRACT SANRAL R.573-020-2026/2S

CONSULTING ENGINEERING SERVICES FOR THE UPGRADING OF NATIONAL ROAD R573 SECTION 2: WORK PACKAGE D FROM KM 8.60 TO KM 13.00

THIS DOCUMENT COMPILED BY:

The Provincial Head – Mpumalanga Province
The South African National Roads Agency SOC Ltd
16 Jones Street
Mbombela
1200

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BOOK 2 OF 3

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PART C1: AGREEMENTS & CONTRACT DATA

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Notes to tenderer

1. **Should a tenderer wish to offer a different period of completion than that specified by the Employer, it shall be submitted as an alternative offer on a separate Form of Offer.**
2. **If more than one alternative tender is submitted each shall be numbered and submitted on a separate Form of Offer duly completed and signed.**

C1.1 FORMS OF OFFER AND ACCEPTANCE

C1.1.1 FORM OF OFFER (Incorporating SBD7)

Notes to tenderer:
If a tenderer submits an alternative offer, but:
i) permission was not granted, where applicable: or
ii) a postulated offer is not submitted,
the tender shall be declared a non-responsive tender offer.

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

Sir,

CONTRACT SANRAL R.573-020-2026/2S
CONSULTING ENGINEERING SERVICES FOR THE UPGRADING OF NATIONAL ROAD R573 SECTION 2: WORK PACKAGE C FROM KM -0.50 TO KM 8.60

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

I/we further confirm that by submitting this offer the tenderer accepts the conditions of tender and offers to perform all of the obligations and liabilities of the Service Provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of tender and the conditions of contract identified in the contract data.

A. PRICE OFFERED

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

.....

..... (in words)

(R..... in figures)

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

B. PREFERENCE CLAIMED

I/we claim the following B-BBEE contributor status level ..... as per Returnable Schedule Form D1: Tenderer's B-BBEE Verification Certificate subject to Tender Data C.3.11.8. In the event of any difference between the above stated status level and the Verification Certificate attached to Form D1, the Verification Certificate shall apply.

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

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

Yours faithfully

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

NAME (IN CAPITALS): .....

CAPACITY: .....

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

NAME AND ADDRESS OF ORGANISATION: .....
.....

NAME AND SIGNATURE OF WITNESSES:

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

NAME (IN CAPITALS): .....

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

NAME (IN CAPITALS): .....

C1.1.2 FORM OF ACCEPTANCE (Incorporating SBD7)
(Note to compiler: Form to be printed on SANRAL letterhead)

To (*Name of successful tenderer)*

Dear Sir,

CONTRACT SANRAL (*Insert contract number and description*)

ACCEPTANCE OF OFFER

1. It is our pleasure to inform you that the South African National Roads Agency SOC Ltd (the Employer) accepts your (*select if applicable corrected/corrected alternative/alternative*) offer in the amount of R….. (i.e. including VAT but excluding CPA and any contingent sum not in the priced schedule).

2. The amount due may not be the accepted price but payment shall be made in accordance with the conditions of contract identified in the contract data, including the set-off of any debt agreed to which is due and payable as per Returnable Schedule Form A2.2.

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

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

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

Proforma

4. Deviations and/or qualifications included in your offer as well as any changes to the terms of the offer agreed by us during the process of offer and acceptance shall not be valid unless contained in the appended schedule of deviations. (*If no deviation state* "There are no deviations, qualifications or changes to the documents). Addenda issued during the tender period are deemed not to be deviations to the tender documents and schedules.

5. Notwithstanding the need to agree the mandate required by Section 37 of the Occupational Health and Safety Act (Act 85 of 1993) a proforma of which is attached for your reference, we hereby appoint you as our Agent in terms of Regulation 5(5) of the Construction Regulations, GNR 84 of 2014.

6. In terms of the Employer's Supply Chain Management (SCM) Policy for Infrastructure Procurement and Delivery Management we hereby appoint you as a member/technical advisor of the following committees:
   (i) Project Document Review Committee and
   (ii) Bid Evaluation Committee (BEC) (Please note that this will be on another SANRAL project).

7. A SARS compliance check has been done on you and you are found to be (*select: compliant or non-compliant). (Note to compiler: check SARS website for compliance. If not compliant add the following sentence: Within 7 (seven) working days of the date of this Form of Acceptance, you shall provide proof that you are SARS compliant. Failure to fulfil this obligation shall constitute a repudiation of this agreement.)*

8. Within 14 calendar days of the date of this Form of Acceptance (including the schedule of deviations if any) you shall deliver to us:
   (i) Proof of insurance in terms of the information provided in the contract data and clause 5.4 of the General Conditions of Contract. Proof of validity of insured cover shall be provided on a monthly basis until contract completion.
   (ii) Completed Form of Banking details which is attached hereto (Form C.1.1.4).
   (iii) Completed Tax Compliance Permission Declaration which is attached hereto (Form C.1.1.5).
   (iv) Proof of registration on the Employer's Project Information Module (ITIS).
   (v) Proof that your OHS Specialist is registered with the South African Council for Project and Construction Management Professions (SACPCMP) as a **Professional Construction HSE Agent** for the Design Phase and as a **Construction HSE Manager or a Professional Construction HSE Agent** for the Construction Phase.

(vi) Proof (copies of basic qualification, professional registration and CV) that other required resources (additional design specialists other than Key Persons, and if applicable, assistants to PL and DS) meet the minimum requirements in terms of professional registration and experience as stated in the Scope of Works. These additional resources will be reserved on ITIS.

(vii) Copy of the Joint Venture Agreement. *(Note to compiler: Delete if JV is not applicable)*

Failure to fulfil this obligation shall constitute a repudiation of this agreement. In addition to any other rights of remedy the Service Provider shall, if (i) above has not been met, be automatically barred from tendering on any of our future tenders for a period determined by us but not less than 12 (twelve) months, from the date of tender closure.

9. The effective date of the contract shall be the date of this Form of Acceptance unless you, within seven (7) working days of the effective date, notify us in writing of any justification why you cannot accept the contents of this agreement.

10. The commencement date of the performance of the service shall be ..... *(Note to Compiler: insert the date, which is 8 calendar days after the date of this Form of Acceptance)*.

11. The project hand-over meeting date shall be ..... (*Note to compiler: determine period required for desktop assessment depending on the complexity of the project and volume of information available but it shall not be less than 28 calendar days after the commencement date*). The requirements for the Project Handover meeting are specified in Clause C3.1.12(a). For this purpose, you are provided with a CD/DVD containing the available historic information to aid you to perform the desktop assessment. A draft agenda for the handover meeting is also provided to aid you in preparing for the meeting. *(Note to compiler: Use Draft Agenda as per #1758485 and Notes to Agenda #1758693)*

12. The tenderer must register an account on SAP Ariba before the handover meeting. The link and information to register the Ariba account is provided below:
https://www.nra.co.za/sap-ariba/.
Contact supplierenablement@nra.co.za or ..... *(Note to compiler: insert relevant Procurement Officer generic email address)* for queries regarding SAP Ariba registration.

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

14. The approved Key Persons for this project are:
(Note to Compiler: List all relevant approved key positions and enter name of person)

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

Proforma

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

NAME (IN CAPITALS): .....

CAPACITY: **Provincial Head**

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

.....

.....

NAME AND SIGNATURE OF WITNESSES:

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

NAME (IN CAPITALS): .....

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

NAME (IN CAPITALS): .....

AUTHORITY TO ACT: SANRAL's Delegation of Powers 2.4.1.2

Note to compiler: Delegated authority (SANRAL)

C1.1.3 APPENDIX TO FORM OF ACCEPTANCE

Schedule of deviations.

Notes:

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

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

1. Subject: .....

   Details: .....

2 Subject: .....

   Details: .....

3 Subject: .....

   Details: .....

4 Subject: .....

   Details: .....

Proforma

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

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

(Note to compiler: In the event that an alternative offer has been accepted by the Employer, the various elements of the alternative offer must be listed in this appendix)

C1.1.4 FORM OF BANKING DETAILS

Notes to Tenderer

1. **The Employer applies an Electronic Funds Transfer system for all payments.**
2. **If you are already registered as a vendor with the Employer, you are not required to submit the documentation as per note 3.**
3. **If you are not registered as a vendor with the Employer, you are required to supply:**
   - **a completed SANRAL Vendor Application Form (a copy of the Application Form is provided below).**

SANRAL
SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD
Reg.No.1998/009584/30
BUILDING SOUTH AFRICA THROUGH BETTER ROADS

APPLICATION FOR VENDOR REGISTRATION

Vat Reg: 4220186250

Vendor Name as per Company Registration

.....

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

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

Tel No.		**Fax No.**	

Company Registration number | **BBBEE Status Level**

Income Tax Number | **Vat Registration number**

CSD Registration number | **CSD unique code**

THIS SECTION MUST BE COMPLETED FOR ALL ELECTRONIC PAYMENTS

Name of bank

Account number | **Account Type**

	Current

Branch name | **Branch Code**

Applicant's Authorisation Officer: PRINT NAME

Applicant's Authorisation Officer: SIGNATURE

The following documentation must be submitted with this form:

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

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

Provincial Office - MP
16 Jones Street
Mbombela
1200

OFFICIAL USE ONLY

Region:

Type of vendor:

CONTRACT	**SUNDRY**	**PERSONNEL**

Status of vendor:

NEW	**CHANGE**	**BLOCK**	**UNBLOCK: REASON**

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

VENDOR NUMBER ALLOCATED:

REFER TO EXISTING VENDOR NUMBER

SERVICE PROVIDER'S
LETTER HEAD AND
ADDRESS

Date: .....

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

Attention: Chief Financial Officer

Dear Madam

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

Proforma

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

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

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

Kind Regards

.....
Signature

Name:
Designation:
ID number:

C1.1.5 TAX COMPLIANCE PERMISSION DECLARATION

Note to Tenderer:
In terms of National Treasury Instruction No 3 of 2017/2018 with reference to the Public Finance Management Act, 1999 (Act No 1 of 1999) and Regulations, the Service Provider and sub-contractors are required to provide the employer with written confirmation to access the SARS Electronic Tax Compliance Status (TCS) system to verify and continuously track the tax compliance status of all persons conducting business with the State.

The Service Provider shall complete the declaration below.

The Service Provider shall complete the declaration below.

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

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

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

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

....
SIGNATURE **DATE**

C1.2 CONTRACT DATA

C1.2.1 CONDITIONS OF CONTRACT

Note to tenderer:

1. The legislated Standard Conditions of Contract for Professional Services (as published and amended from time to time by the Construction Industry Development Board) are included together with SANRAL's particular conditions of contract where the former is shown in standard format and SANRAL's amendments (i.e. particular conditions) shown in italics. SANRAL's particular conditions of contract are shown in italics as amending clauses of the Standard Conditions.

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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.

Agent
The Service Provider appointed in terms of the Occupational Health and Safety Act No. 85 of 1993, including the relevant Regulations.

Black People
Black people has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

Construction monitoring/supervision
The process of managing and co-ordinating the Works Contract and over-seeing and/or inspecting the Works in accordance with the Employer's requirements.

Consulting Engineering Firm
A natural person or legal entity which provides independent technology-based intellectual services in the built, human and natural environment to clients for a fee, and does not engage in or is not a subsidiary or holding company that engages in manufacturing or construction and is not in substance owned by the State or a similar public body or is not in substance the design department of a development, manufacturing or construction enterprise.

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

Contractor
The contracting party named as contractor in the Letter of Tender of the Works Contract accepted by the Employer.

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.

EME
EME is 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, 2003 (Act No. 53 of 2003).

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

Engineer
The natural or juristic person, partnership, Incorporated Company, Proprietary Limited Company or Close Corporation appointed in writing by the Employer for the construction monitoring and management of the engineering Works undertaken by the Contractor.

Force Majeure
"For the purpose of this Contract the expression 'Force Majeure' shall mean an event or circumstance described in clause 8.3.1.

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 organizations who are not the Employer, the Service Provider or any employee, sub-contractor, or supplier of the Service Provider.

Parties
The Employer and the Service Provider.

People with Disabilities
People with Disabilities has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998).

Period of Performance
The period within which the Services are to be performed and completed.

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 of the Contract Price.

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

Public Official
a) Any official or employee of any government department and/or state-owned entity;
b) Any person performing a public function;
c) Any official or employee of a public international organisation including without limitation donor or funding agencies or the Employer;
d) Any candidate for political office; or
e) *Any* political party or an official of a political party.

QSE
QSE is 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, 2003 (Act No. 53 of 2003).

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 Provider 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.

Sub-contractor
A person or body corporate who enters into a sub-contract with the Service Provider to perform part of the Services.

Targeted Enterprise
A Consulting Engineering Firm who is an EME (BEP)* or QSE (BEP)*, contracted by the Service Provider to perform a tendered percentage of work stated in the Contract Data under his guidance and which complies with the following:

a) Is at least 51% owned by black people and
b) Has a B-BBEE status* of 'level one or level two contributor'; and
c) does not share equity holding with the Service Provider; and
d) is registered in terms of the Company's Act, 2008 (Act No. 71 of 2008) or Close Corporation Act, 1984 (Act No. 69 of 1984); and
e) is registered on the National Treasury's Central Supplier Database (CSD).

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

Technical Proposal
The Key Persons proposed by the Service Provider to undertake the respective functions/duties as defined under the Contract.

Works or Works Contract
That project or part of a project that the employer wishes to have delivered and for which the Service Provider has been appointed for the performance of the services specified in this contract.

Youth
For purposes of this contract, Youth means persons between the ages of 18 (eighteen) and 35 (thirty-five).

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 *The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of documents shall be in accordance with the following sequence:*
a) the Form of Acceptance
b) the Form of Offer
c) the Contract Data
d) the General Conditions of Contract
e) the Scope of Work
f) the Pricing Schedule and any other documents forming part of the Contract.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing laws

"Law" means all national (or other spheres of Government) legislation, statutes, ordinances and other laws including the South African Common Law, and regulations and by-laws of any legally constituted public authority.

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.

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, or other communication made between the Parties pursuant to the Contract shall be in writing and 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 when *delivered* to such Party at the address *stated* in the Contract *Data*, or one week after having been sent by registered post.

3.4.2 If the sender requires evidence of receipt, he shall state such requirement in his communication and, wherever there is deadline for the receipt of the communication, he may demand evidence of receipt of his communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.

3.4.3 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 agreed, 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 shall not be unreasonably withheld.

3.7 Confidentiality

Both Parties shall keep all commercially 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 except to the *extent strictly necessary to carry out obligations under this Contract or to comply with applicable laws.*

3.8 Variations

3.8.1 The Employer may, without changing the objectives or fundamental scope of the Contract, order variations to the Services or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services. *No variation shall have any force or effect unless reduced to writing and signed by both Parties.*

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 in writing between the Service Provider and the Employer, *prior to the change being implemented.*

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 Sole agreement

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

3.10 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 *wilful or* negligent act or omission by the Service Provider *or his subcontractors* in the performance of the

Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.11 Penalty

3.11.1 *In the event* that 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, 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.

3.11.2 *In the event that due to his negligence or for reasons within his control, the Service Provider does not meet the specified target of work to be sublet stated in the Contract Data to the Targeted Enterprise the Employer shall be entitled to levy a penalty as stated in the Contract Data.*

3.11.3 In the event that due to his negligence or for reasons within his control, the Service Provider does not disclose subcontracting arrangements the Employer may be entitled to levy a penalty as stated in the Contract Data.

3.11.4 In the event that due to his negligence or for reasons within his control, the Service Provider does not perform the service of capturing structures inventory and condition updates within the specified period of time, the Employer shall be entitled to levy a penalty as stated in the Contract Data.

3.11.5 In the event that the draft documentation and/or design is of sub-standard/poor quality, the Employer shall be entitled to levy a penalty for the additional time spent by the Employer to correct the documentation and/or design to the required acceptable standard at the hourly tariffs as specified under Additional Duties.

3.11.6 If the Employer has become entitled to the maximum penalty amount referred to in 3.11.1, he may after giving notice to the Service Provider:

a) terminate the Contract

b) complete the Services at the Service Provider's cost.

3.12 Equipment and materials furnished by the Employer

3.12.1 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.

3.12.2 *Unless otherwise stated in the Contract Data*, the Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.12.1 for their full replacement value.

3.13 Illegal and impossible requirements

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

3.14 Programme

3.14.1 The Service Provider shall, within the time period set out in the Contract Data, submit to the Employer 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 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; and

c) other information as required in terms of the Scope of Work or Contract Data.

3.14.2 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.

3.14.3 The Service Provider shall regularly update the programme to reflect actual progress to date and expected future progress.

3.15 Severability

If a court of competent jurisdiction holds that any provision of this Contract is severable by reason of it being invalid, illegal, unlawful or unenforceable and as a consequence of which prevents the accomplishment of the purpose of this Contract, the Employer and the Service Provider shall meet and review the matter to adopt means to fulfil the purpose of the Contract.

3.16 Waiver

No defence of a waiver of any of the provisions of this contract shall be effective unless it is expressly stated in writing, by the Party against whom such defence is raised, to be a waiver of such provisions and is communicated to the other Party in writing in accordance with the provisions of Clause 3.4.

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 any assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

4.1.3 The Service Provider shall be entitled to rely on the accuracy and completeness of all information furnished by or on behalf of the Employer.

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

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:

4.3.1 authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;

4.3.2 provide all relevant data, information, reports, correspondence and the like, which become available;

4.3.3 procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;

4.3.4 assist in the seeking of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.5 designate in writing a person to act with his complete authority in giving instructions and receiving communications on his behalf and interpreting and defining his policies and requirements in regard to the Services.

4.4 Services of others

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

4.4.2 The Employer shall not enter into an agreement or contract with others which describes any of the duties and responsibilities of the Service Provider in terms of the Contract or which imposes obligations on him, without first obtaining the Service Provider's written agreement thereto.

4.4.3 *Where the provision of services by others in terms of Clause 4.4.1 is necessary for the proper performance of the Services then the Employer shall ensure that such provision of services by others is given in sufficient time so as to allow the Service Provider to proceed in accordance with the programme. The Service Provider shall co-operate with the suppliers of such services but shall not be responsible for them or their performance.*

4.5 Notice of change by Employer

On becoming aware of any matter which will materially change, or has changed, the scope, cost or timing of the Services, or on becoming aware of any defect or deficiency in the Services, the Employer shall immediately advise the Service Provider thereof.

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 *and shall be responsible for breach of professional duty by reason of any error, omission or neglect in connection with delivering the services.*

5.1.2 Where the Services include the exercise of powers to certify, decide or otherwise exercise discretion in regard to a contract or agreement between the Employer and Others, then the Service Provider shall act in respect of that contract or agreement as an independent professional.

5.1.3 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.

5.1.4 Unless specifically instructed differently, the Service Provider is delegated as the Employer's "Mandatary" in terms of the Occupational Health and Safety Act (Act no. 85 of 1993), and as the Employer's Agent as defined in Construction Regulations 5(5), (6) and (7) of the said Act.

5.1.5 The Service Provider, if requested by the Employer, shall provide any plans and calculations for checking by others.

5.1.6 All design calculations shall be kept and safeguarded for the duration of the insurance(s) required in terms of Clause 5.4.1.

5.1.7 The Service Provider shall enter into a contract over the full contract duration (either through partnership, joint venture or sub-contracting) with a Targeted Enterprise(s) to perform a percentage of work as stated in the Contract Data.

5.1.8 The Service Provider undertakes to pay the Targeted Enterprise(s) the full value due in each interim fee claim. The Service Provider further undertakes to make payment within 30 (thirty) days of presentation by the Service Provider of the interim fee claim to the Employer for payment, or by the 30th of the month following that in which the Targeted Enterprise(s) completed the work, whichever date is earlier.

5.2 Exercise of authority

5.2.1 The Service Provider shall have no authority to relieve others appointed by the Employer to undertake work 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.

5.2.2 *Whenever necessary to enter upon land for the performance of the Contract the Service Provider shall do so in accordance with the provisions of the SANRAL Act, (Act 7 of 1998) and shall indemnify the Employer from all costs arising from any transgression committed by the Service Provider.*

5.3 Designated representative

The Service Provider shall designate in writing a person to act as his representative and such person shall have 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, at his own cost, unless otherwise agreed, take out and maintain in force such insurance policies in respect of their own risks in performing the Services as are stipulated in the Contract Data, subject to the approval of the Employer, which approved shall not be unreasonably withheld.

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 *with an insurance company registered in the Republic of South Africa, or as otherwise approved by the Employer* 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 scope, cost or timing of the Services, the Service Provider shall give notice thereof to the Employer, save that the Service Provider is empowered to make minor changes or variations within the overall programme or budget and within such parameters as are defined by the Employer, provided that such changes are reported timeously to the Employer.

5.8 Safeguarding the Employer's data/property

5.8.1 *Anything supplied by or paid by the Employer for the use of the Service Provider, shall be the property of the Employer and, where applicable.*

5.8.2 *The Parties shall take reasonable precautions (each having regard to the nature of the other's respective obligations under the Contract) to preserve the integrity of the Employer's data/property including appropriate back-up procedures unit completion of the services and/or return of such data/property to the Employer.*

5.8.3 *In the event that the Employer's data is corrupted or lost as a result of any default by the Service Provider, the Employer shall at the Service Provider's expense, have the option to:*

- *require the Service Provider to restore or procure the restoration of such data; or;*

- *itself restore or procure restoration of such data.*

5.9 Performance Security

Where required, the Service Provider shall obtain (at his cost) a Performance Security for proper performance in the amount and currencies stated in the Contract Data. If an amount is not stated in the Contract Data, this sub-clause shall not apply.

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

6. CONFLICTS OF INTEREST, *CORRUPTION AND FRAUD*

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 sub-contractors, 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 judgment, or that of Subcontractors or Personnel.

6.4 Corruption and Fraud

6.4.1 The Service Provider shall neither:

(a) Offer or give or agree to give any person of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forebore to do any act in relation to the obtaining or performance of this contract or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this contract; nor

(b) Enter into this contract if in connection with its commission or a reward of any type has been paid, offered or agreed to be paid to any person of the Employer by the Service Provider or on his behalf or knowledge.

(c) The Service Provider shall immediately give notice to the Employer with full particulars in the event that the Service Provider receives a request from any public official requesting illicit payments.

(d) The Service Provider shall at the Employer's request demonstrate that it adheres to a documented code of conduct in respect to the prevention of corruption and bribery.

(e) The Service Provider declares that as the date of signature of the Agreement there are no circumstances or matters that may give rise to a conflict of interest in the performance of its obligations under the Agreement. The Service Provider shall inform the Employer immediately if it becomes aware of any such circumstances or matters. If a conflict of interest arises then the Parties shall agree, in good faith, on measures to manage such conflict.

6.4.2 In the event that the Employer, in good faith and on reasonable grounds, comes to the opinion, that a breach of any of the provisions of Clause 6.4.1 has been perpetrated by the Service Provider or anyone employed by him or acting on his behalf in relation to this contract or any other agreement with the Employer, the Employer may:

i. summarily suspend the operation of this Contract by notice in writing to the Service Provider, informing him of the Employer's opinion and the grounds and reasons upon which it is based, and calling upon the Service Provider to show cause, in writing, within fourteen (14) days of receipt of the written notice why the Employer should not terminate this Contract on the grounds of the alleged breach(es) of Clause 6.4.1 of this Contract;

ii. withhold all payments due;

iii. terminate this Contract by notice in writing to the Service Provider, if the Service Provider fails to respond to the Employer's written response, to satisfy the Employer that his opinion is unfounded. Provided always that such termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Employer and provided also that the Employer may recover from the Service Provider such sum as the Employer deems equivalent to the amount or value of any such gift, consideration or commission.

6.4.3 In the event that the Employer, in good faith and on reasonable grounds, comes to the opinion that any contract with a Government or public sector body has been or was obtained by the Service Provider through actions that mutatis mutandis are similar in nature to those barred in terms of Clause 6.4.2 by the Service Provider or by anyone employed by the Service Provider or acting on the Service Provider's behalf in relation to such Contract, the Employer may:

(a) summarily suspend the operation of this Contract by notice in writing to the Service Provider, informing him of the Employer's opinion and the grounds and reasons upon which it is based, and calling upon the Service Provider to show cause, in writing within fourteen (14) days of receipt of the written notice why the Employer should not terminate this Contract on the grounds of the alleged breach(es) of Clause 6.4.1 of this contract;

(b) withholds all payments due

(c) terminate this Contract by notice in writing to the Service Provider, if the Service Provider fails to respond to the Employer's written notice within the prescribed time, or fails, in his written response, to satisfy the Employer that this opinion is unfounded. Provided always that such termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Employer.

7. SERVICE PROVIDER'S PERSONNEL

7.1 Provision of Personnel

7.1.1 The Service Provider shall provide appropriate Personnel for such time periods as required in terms of the Contract and shall 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.

7.1.2 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 7.1.1 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.

7.1.3 The Service Provider shall:

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.

7.2 Staff and equipment

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

7.2.2 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.

7.2.3 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.

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

7.2.5 Except in the case of replacement resulting from death or where the Employer requests a replacement not provided for by the Contract, the Service Provider shall bear all additional costs arising out of or incidental to such replacement.

7.2.6 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.

7.3 Working hours, overtime and leave

Where the fees for the Services are time-based, working hours, leave entitlement and holidays for Personnel provided in terms of Clause 7 are to be as stated in the Contract Data, or, if not stated, to be determined by the Service Provider. The Employer will not be responsible for overtime payments to Personnel *unless so specifically provided for in the Pricing Schedule*.

8. COMMENCEMENT, COMPLETION, MODIFICATION SUSPENSION AND TERMINATION OF THE CONTRACT

8.1 Commencement

The effective date of the contract shall be the date of the Form of Acceptance. Contract shall come into effect on the date that it is signed by both Parties or such later date as may be stated in the Contract Data. The Service Provider shall commence the performance of the Services within thirty (30) days after the date that the Contract becomes effective, or such date as may be specified 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) *variations to* 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.*

8.2.3 The Service Provider shall within 14 days of becoming aware that a delay may occur, 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 thereafter deliver to the Employer full and detailed particulars of the request, in order that it may be investigated at the time.

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 In this clause "Force Majeure" means an exceptional event or circumstance:

(a) which is beyond party's control,
(b) which such a party could not reasonably have provided against before entering into the Contract,
(c) which, having arisen, such Party could not reasonably have avoided or overcome, and
(d) which is not substantially attributable to the other Party

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below;
(i) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity
(ii) war, hostilities (whether war to be declared or not), invasion, act of foreign enemies,
(iii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
(iv) riot, commotion, disorder, strike or lockout by persons other than the Service Provider's Personnel or other employees of the Service Provider and Sub-contractors,

An event or circumstance which is attributable to a wilful act, neglect or failure to take reasonable precautions by the affected party, his employee's agents, sub-contractors or others shall, under no circumstances, be considered Force Majeure.

8.3.2 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 *notified* the other Party within 10 days of its occurrence and within a reasonable time of *its estimated duration and consequences. Failure to so notify shall terminate that Party's right to release from his obligations.*

8.3.3 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the time for completion shall be extended by the extent of the delay plus a reasonable period for the resumption of work or, if the speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be necessary in the circumstances.

8.3.4 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 continue to be paid under the terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and reactivating the performance of the Services.

8.3.5 *If the Force Majeure event continues for more than 90 (ninety) days, either Party shall have the right to terminate this Contract with immediate effect.*

8.4 Termination

8.4.1 The Employer may in addition to his rights under sub-clauses 6.4.2, 6.4.3 and 10.5 terminate the Contract by giving not less than thirty (30) days written notice thereof to the Service Provider after the occurrence of any of the following events:
(a) 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;
(b) if the Service Provider becomes insolvent or bankrupt;
(c) 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;
(d) *Committing an offence in terms of clauses 6.1 and/or 6.4;*
(e) if the Service Provider acts in such a way, under this contract or any other contract with the Employer, that a statute relating to the combating of fraud, corruption, uncompetitive practice and the like can be invoked; or
(f) if the Employer, at any time in its sole discretion determines that it no longer requires the completion of the Service by the Service Provider.
(g) in the event that the directors of the Service Provider are found guilty by a Court of Law of fraud charges against them, SANRAL reserves the right to terminate the contract and to assert all legal recourse available to it.

Upon delivery of such notice by the Service Provider he shall immediately vacate the site and deliver to the Employer all drawings, documents and papers relating to the Services and shall within fourteen (14) days after the date of termination submit an account for the Services satisfactorily performed prior to the date of notice. The Employer shall not be liable to the Service

Provider for any loss of profit or damages suffered as a result of cancellation of the contract as contemplated in this clause.

8.4.2 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 6 months, 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 6 months; 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.

8.4.3 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.2, the Employer shall make the following payments to the Service Provider:

(a) remuneration in terms of the Contract for Services satisfactorily performed prior to the effective date of termination *less any costs arising from termination.*

(b) except in the case of termination pursuant to events (a) and (b) of Clause 8.4.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

8.4.4 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.

8.4.5 *Where required in terms of the contract data the surety delivered by the Service Provider in terms of this Contract shall remain in force until the completion of the project.*

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. This shall include intellectual property gained during the project and any research work, papers and presentations done using the Employer's resources and information.

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 including that of a sub-contractor, shall be valid only if it is a written agreement, by which the *Parties* transfer *their 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 there under, 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.

11. SUB-CONTRACTING

11.1 A sub-contract 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.

11.2 The Service Provider shall not sub-contract to nor engage a Sub-contractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Sub-contractor 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 sub-contracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization, failing which the Sub-contractor shall be deemed to be approved by the Employer. If the Service Provider enters into a sub-contract with a Sub-contractor without prior approval, the Employer may forthwith terminate the Contract.

11.3 The Employer shall have no contractual relationships with Sub-contractors. However, if a Sub-contractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Sub-contractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.

11.4 The Service Provider shall advise the Employer without delay of the variation or termination of any sub-contract for performance of all or part of the Services.

11.5 The Service Provider shall be responsible for the acts, defaults and negligence of Sub-contractors 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 sub-contracting of any part of the Contract or of the engagement by the Service Provider of Sub-contractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

11.6 The Service Provider undertakes to pay the sub-contractor the full value as certified as being due in each interim monthly account. The Service Provider further undertakes to make payment within 7 (seven) days after payment by the Employer or by the 25th of the month following that in which the sub-contractor invoiced for the work, whichever date is earlier.

11.7 The Employer may request the Service Provider to supply reasonable evidence that the subcontractor has received all amounts due in accordance with previous accounts, less deductions or otherwise. Unless the Service Provider:

(i) submits this reasonable evidence to the Employer, or
(ii) satisfies the Employer in writing that the Service Provider is reasonably entitled to withheld or refuse to pay these amounts, and
(iii) submits to the Employer reasonable evidence that the subcontractor has been notified of the Service Provider's entitlement,

then the Employer may (at his sole discretion) pay, direct to the subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the Subcontractor for which the Service Provider has failed to submit evidence described in sub-clauses (i) to (iii) above. The Service Provider shall then repay the Employer, the amount which the subcontractor was directly paid by the Employer.

11.8 It is a condition of this contract that the Service Provider sub-contracts a minimum of 30% to Targeted Enterprise/s.

Minimum sub-contract requirement for all entities is 30%.

12. RESOLUTION OF DISPUTES

12.1 Settlement

12.1.1 Any dispute between the Parties shall arise by either party presenting to the other in writing the nature of the dispute and the facts to be dealt with. 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 ten working 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 and shall do so, if after a period of 90 (ninety) days from entering into the mediation process, no resolution has been achieved.

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; provided that the dissatisfied Party notifies the other in writing* within *28 Days* of mediator's decision being issued or the mediator declaring the mediation to have ended, as provided for in the Contract Data. Claims not brought within the time periods set out herein will be deemed to be waived.

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 *written* 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 notice of dissatisfaction is *not* 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, current at the date of the contract, published by the Association or Arbitrators.

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 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.

13.2 Liability of the Employer

13.2.1 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.

13.2.2 In the event where the design is found to be incomplete or inconclusive and results in delay damages *and/or additional expenditure during the works contract period, the Employer shall be entitled to claim against the Services Provider's Professional Indemnity.*

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) The compensation payable by either Party shall be reduced by the arbitrator/mediator/adjudicator to such extent as is deemed just and equitable having regard to the degree in which the other Party or any third party was at fault in relation to the loss or damage. The liability of the Parties is not joint and each Party shall only be liable for that proportion of the compensation which is attributable to his fault.
(c) 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 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 event; or

b) the sum stated in the Contract Data or, where no such amount is stated, to an amount *equal to twice the Contract Price (inclusive of VAT) payable to the Service Provider under the Contract.*

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

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 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 *and Scope of Works*. 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 *(or any specified fixed-progressed payments due that have been delayed by the acts of the Employer)* 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 on receipt by him of the relevant invoice for interest, at the Prime overdraft rate plus 2% per annum, compounded monthly 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 six 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.

14.5 *All accounts presented for payment shall be according to the Employers prescribed format with proof of ITIS data capture and shall be submitted to the Employer electronically and when required, delivered in hard copy to the Employer's relevant regional office.*

14.6 Payments due shall be subject to the deduction of retention monies as stated in the Contract Data. The retention monies so deducted shall be released in accordance with the phases and conditions stated in the Contract Data.

14.7 The Employer shall be entitled to make direct payment to a subcontractor as stated in Clause 11.7 and deduct the amount from the Service Provider's interim account.

14.8 The Service Provider unconditionally authorises SANRAL to set off any debt agreed to which is due and payable by the Service Provider on this or any other SANRAL contract.

14.9 If applicable, Contract Price Adjustment will be paid according to the method stated in the Contract Data.

C1.2.2 CONTRACT DATA: INFORMATION PROVIDED BY THE EMPLOYER

Clause No	Contract Data
1	The Employer is the South African National Roads Agency SOC Limited (SANRAL) The Employer's domicilium citandi et executandi (permanent physical business address) is: 48 Tambotie Avenue VAL DE GRACE, 0184 The authorised and designated representative of the Employer is: Name: …… Telephone: ……..…….. Facsimile: ……..……..
3.4	The address for receipt of communications is: Name: ……..…… Telephone: ……..…… Facsimile: ……..…….. E-mail: …… Address: ……..…… ……..……
3.5	The project is Consulting Engineering Services for ……..…….. ……..…… ……..…… The location for the performance of the Project is ……..…… ……..……
3.6	The Service Provider may only release public or media statements or publish material related to the Services or Project subject to the approval of the Employer.
3.11.1	The penalty payable for poor performance will be applied over the full-time duration of the Contract. Penalty charges shall be as follows: a) Failure to meet milestone dates in the Project programme = R2,000.00/day (excl. VAT) subject to a maximum of 10% of the Contract Value. b) Failure to capture structures inventory and condition updates onto ITIS before issue of Taking-Over-Certificate (TOC) = R5,000.00/structure (bridges and major culverts) per week or part thereof subject to a maximum of R50,000.00 (excl. VAT) per structure. c) Failure to disclose Sub-contractors = up to 10% of the Contract value. d) Failure to meet the tendered target of work for Targeted Enterprises = 100% of the value by which the cumulative value of payments to the Targeted Enterprises fails to meet the tendered percentage. e) Failure to issue the Employer approved and signed drawings at either the Works Contract Tender Stage (as required under Clause C3.5.3: *Compilation of Final Tender Document*) or at the Commencement of the Works Contract Stage shall result in a penalty of R5,000.00 (ex. VAT) per drawing. f) Late capture of monthly ITIS PIM date = R2,000.00/day (excl. VAT) applicable from the first day of the new month following the previous month end, subject to a maximum of 10% of the Contract Value.

g) Unresolved errors in monthly ITIS PIM data captured without evidence of logging issues = R2,000.00/day (excl. VAT) applicable from the first day of the new month following the previous month end, subject to a maximum of 10% of the Contract Value.

h) Late processing and submission of Contractor's Payment Certificate = R2,000.00/day (excl. VAT) applicable from the first day of the new month following the previous month end, subject to a maximum of 10% of the Contract Value.

i) Any audit finding raised against a contract by Internal Audit, AGSA, DOL/DFE related to duties of the Service Provider = R20,000.00/finding (excl. VAT), subject to a maximum of 10% of the Contract Value.

i) Late issuing of Job Instructions for contractor using ITIS Desktop/Mobile App for:
   (i) Pothole reports on Vala Zonke App by public for which a Job Instruction has not been issued to Contractor;
   (ii) Drains/culverts/bridges that are silted up or where flood debris is blocking waterways within road reserve as identified from Bridge Inspections;
   (iii) Grass cutting causing unsafe conditions = R2,000.00/day (excl. VAT) for each calendar day that Job Instruction is issued late, subject to a maximum of 10% of the Contract Value.

k) CE/ACE not performing route verification inspection of quality of work done using the ITIS Mobile App on a monthly basis = the monthly sum to fulfil the duties of the Engineer as per Payment Item 35.01(a)(i).

l) Late submission of draft as-built records = R5,000.00/day (excl. VAT) for every calendar day later than 3 (three) months after issuing the Taking-Over-Certificate, subject to a maximum of 10% of the Contract Value.

3.14 The programme shall be submitted within 14 days of the award of the Contract.

5.1.7 It is encouraged that Local Targeted Enterprises from the Mpumalanga Province participate in a minimum of 1/3 (one-third) of the specified percentage of the Contract Price (excluding provisional and prime cost sums and the respective mark-up, but including provision for site supervision staff and the respective mark-up).

5.4 The Service Provider is required to provide the Service with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

The Service Provider is required to provide the following insurances:

1. Insurance against Professional indemnity
   Cover is: R 24 million without a limit on the number of claims (The limit of liability is only provided to cover the Employer's damages and does not allow for the Service Provider's costs for defending any claim.)
   Period of cover: Structures – 25 years: all other instances – 10 years

2. Insurance against general public liability
   Cover is: R 10 million
   Period of cover: Structures – 25 years: all other instances – 10 years

3. Third Party Liability
Cover is: R 24 million
   Period of cover: Duration of contract only.

5.5 The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions:

1. Appointing Key Personnel not listed by name in the Contract Data.
2. Appointing sub-contractors for the performance of any part of the Service.
3. Expending any Prime Cost and/or Provisional Sum in the Contract or Works Contract.
4. Authorising any work under a Variation (Works Authorisation) for the Works Contract.
5. Authorising any work outside the contract limits.
6. Over-expenditure on the Works Contract.
7. Changing the scope of work for the Works Contract.
8. Acceptance of sub-standard work and/or reduced payments under the Works Contract.
9. All requirements in the relevant documents listed in Clause C3.1.6.
10. Making statements to the media regarding the project.

5.9 The provision of a Performance Security will not be required under this Contract.

7.2 The Key Persons required for this project are:

Contract Engineer *:* who shall be in permanent employment of the Service Provider.)

7.3 The working hours and holiday for site staff are:

- Site working hours
- Annual leave shall be taken during the recognized construction industry shutdown period.

8.1 The effective date of the contract shall be the date of the Form of Acceptance.

The time to commence the performance of the Services is 8 calendar days after the date that the Contract becomes effective.

8.2 The Contract is concluded on the date when the Service Provider has completed all deliverables in accordance with the Scope of Work.

9.1 Copyright of documents prepared for the Project shall be vested with the Employer.

11.2 The Service Provider shall not sub-contract more than 25% of the tendered contract value (including value of work allocated to Targeted Enterprise(s) but excluding any services specified in the Scope of Works to be procured under a Provisional Sum through the Employer's Supply Chain Procurement process) to any other enterprise that does not have an equal or higher B-BBEE status level, unless the intended sub-contractor(s) is an Exempted Micro Enterprise that has the capability and ability to execute the sub-contract.

The Targeted Enterprise(s) shall not be allowed to sub-contract any work that forms part of the tendered participation percentage without the Employer's approval.

All Targeted Enterprise(s)/ subcontractor(s) shall be registered on the National Treasury's Central Supplier Database (CSD)

The Service Provider shall disclose all subcontracting arrangements. If the Service Provider fails to disclose, he shall be given 14 days to make representation as to why:
(i) the contract shall not be terminated;
(ii) the Service Provider shall not be penalised up to 10% of the value of the contract.

12. Interim settlement of disputes is to be by mediation.

Final settlement is by litigation.

In the event that the parties fail to agree on a mediator, the mediator is to be nominated by the President of the South African Institution of Civil Engineering.

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 36 months from the date of termination or completion of the Contract.

13.5 The maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to R 24 million

14.6 Retention monies shall be 10% of the value of completed works up to a maximum of R 300 000.00 (excluding VAT). Such retention monies shall be released by the Employer as follows:

1. 60% on receipt of approved draft Contract Report and As-built material records and drawings within 3 (three) months of issue of the Taking-over Certificates of the Works Contract.
2. 40% on receipt of approved final copies of the above within 1 (one) month of the issue of the Performance Certificate for the Works Contract.

14.7 Contract Price Adjustment: refer to pricing instructions in clause C2.1.6 of the pricing schedule.

Base date shall be the date 28 days prior to the latest date for submission of tenders.

C1.2.3 CONTRACT DATA: INFORMATION PROVIDED BY THE TENDERER

A: CONTACT DETAIL

The Service Provider is .....

Address: .....

Telephone: .....

Facsimile: .....

The authorised and designated representative of the Service Provider is:

Name: .....

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

……

Telephone: .....

Facsimile: .....

E-mail Address: .....

B: KEY PERSONS

Key Persons	**Name**	**Indicate whether permanent or not permanent ***
Contract Engineer		
Alternate to Contract Engineer (if applicable)		

* Attach letter confirming permanent employment.

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

The amount of work expressed as a percentage of the Contract Price (excluding provisional and prime cost sums and the respective tendered mark-up (if any), but including provision made for site supervision staff (payment items 3.7.4(a) and (b)) that will be undertaken by a Targeted Enterprise(s) selected by the Service Provider shall be 30%*.

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

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

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

C1.3 OTHER STANDARD FORMS

Note to compiler: delete this section if no other forms are required.

C1.3.1 FORM OF GUARANTEE

Note to tenderer:
This proforma guarantee is included for information purposes only. Where required in terms of the Contract, a separate form of Guarantee will be issued to the successful tenderer for completion and signature

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

CONTRACT SANRAL N…….. *(Insert contract number and title)*

1. I/We, the undersigned,

   ..... and .....

   in our capacity as

   ..... and .....

   and as such duly authorised to represent: .....

   .....

   .....

   (hereinafter referred to as "the Guarantor") (in the case of a company a Resolution to be attached) do hereby hold at your disposal the amount of .....
   .....
   (R……) (the "guaranteed amount") for the due fulfilment by (*insert the name of Service Provider)* (hereinafter referred to as "the Service Provider") of its obligations to The South African National Roads Agency SOC Limited (hereinafter referred to as "SANRAL") in terms of the above stated contract between the Service Provider and SANRAL.

2. We hereby renounce the benefits of the exceptions *non numeratae pecuniae, non causa debiti, excussionis* and *divisionis*, the meanings and effect whereof we declare ourselves to be fully conversant.

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

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

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

6. This guarantee is neither negotiable nor transferable and
   (a) must be surrendered to us at the time when SANRAL accounts to the Guarantor in terms of clause 5 above, or

Not Required

(b) shall lapse upon the issue of the Taking-Over Certificate for the construction Works of the project, and

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

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

THUS DONE AND SIGNED AT …… ON THIS ……DAY OF …… 20 ……

Not Required

GUARANTOR: .....

NAME (IN CAPITALS) .....

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

NAMES (IN CAPITALS): 1..... 2.....

ADDRESSES: 1..... 2.....

....

....

C1.3.2 AGREEMENT IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 1993 (ACT NO 85 OF 1993) AND CONSTRUCTION REGULATIONS 2014

This AGREEMENT made at .....

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

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

in his capacity as ..... *compiler to insert*

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

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

.....

in his capacity as .....

WHEREAS the Employer is desirous that certain works be designed, viz CONTRACT SANRAL: R.573-020-2026/2S CONSULTING ENGINEERING SERVICES FOR THE UPGRADING OF NATIONAL ROAD R573 SECTION 2: WORK PACKAGE D FROM KM 8.60 TO KM 13.00and has accepted a tender by the Mandatary for the design and construction supervision of such works and has appointed the Mandatary in terms of Regulation 5(5) of the Construction Regulations 2014, and whereas the Employer and the Mandatary have agreed to certain arrangements and procedures to be followed in order to ensure compliance by the Mandatary with the provisions of the Occupational Health and Safety Act 1993 (Act 85 of 1993);

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

2. This Agreement shall hold good from its commencement date, to either:
   a) the date of the construction contract Performance Certificate issued in terms of sub-clause 11.9 of the Conditions of Contract for Construction for Building and Engineering Works designed by the Employer (1999) published by Federation Internationale des Ingenieurs-Conseils (FIDIC), as contained in Volume 1 of the contract documents pertaining to this contract, or
   b) the date of termination of this contract in terms of Clause 8 of the CIDB's Standard Conditions of Contract for Professional Services.

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

4. In addition to the requirements of the agreed contract, the Mandatary further agrees to strictly adhere to his duties and responsibilities as set out in Regulation 6 of the Construction Regulations 2014.

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

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

7. The Mandatary undertakes to ensure that he and/or his sub-Service Providers and/or their respective employees will at all times comply with the following conditions:
   a) The Mandatary shall assume the responsibility in terms of Section 16.1 of The Act. The Mandatary shall not delegate any duty in terms of Section 16.2 of The Act without the prior written approval of the Employer. If the Mandatary obtains such approval and delegates any duty in terms of section 16.2 a copy of such written delegation shall immediately be forwarded to the Employer.
   b) All incidents referred to in Section 24 of The Act shall be reported by the Mandatary to the Department of Labour as well as to the Employer. The Employer will further be provided with copies of all written documentation relating to any incident.
   c) The Employer hereby obtains an interest in the issue of any formal enquiry conducted in terms of section 32 of The Act into any incident involving the Mandatary and/or his employees and/or its sub-Service Providers.

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

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

WITNESS 1: .....

NAME (IN CAPITALS) .....

WITNESS 2: .....

NAME (IN CAPITALS) .....

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

WITNESS 1: .....

NAME (IN CAPITALS): .....

WITNESS 2: .....

NAME (IN CAPITALS) .....