

MANDELA BAY DEVELOPMENT AGENCY

TENDER NO. MBDA TSP 07/22

CONSTRUCTION OF HELENVALE PLAY PARK

CONTRACT

PART 1 (OF 4) : AGREEMENT AND CONTRACT DATA

- C1.1 Form of Offer and Acceptance**
- C1.2 Contract Data**
- C1.3 Form of Guarantee**
- C1.4 Health and Safety Mandatary Agreement**
- C1.5 Pro Forma Disclosure Statement**
- C1.6 Pro Forma Adjudication Board Member Agreement**

C1.1 : FORM OF OFFER AND ACCEPTANCE

1 OFFER

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

CONSTRUCTION OF HELENVALE PLAY PARK

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

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

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE-ADDED TAX IS:

.....
.....
.....Rand (in words); R.....(in figures)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in terms of the conditions of contract identified in the contract data.

Signature(s) of authorized agents:.....

Name(s) (in block letters)

Capacity of authorized agents:

for and on behalf of the Tenderer

.....
(Name and address of organization)

Witness:(Full name – in block letters – and signature)
(Name)

.....
(Signature)

Date:

2 ACCEPTANCE

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

The terms of the contract are contained in:

Part C1 : Agreements and contract data (which includes this agreement)

Part C2 : Pricing data

Part C3 : Scope of work

Part C4 : Site Information

and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

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

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

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor), within five (5) working days of the date of such receipt, notifies the employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

For and on behalf of the Employer:

Signature(s) of authorized agent(s)

Date:.....

Name(s) _____

Capacity: **Chief Executive Officer**

for the **Employer:** **Mandela Bay Development Agency**
P O Box 74, PORT ELIZABETH, 6000

Witness:(Full name – in block letters – and signature)
(Name)

.....
(Signature)

Date:

3 SCHEDULE OF DEVIATIONS

Notes:

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

A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

1. Subject
Details
2. Subject
Details
3. Subject
Details
4. Subject
Details
5. Subject
Details

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

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

for and on behalf of the Tenderer

.....
(Name and address of organization)

Witness:(Full name – in block letters – and signature)
(Name)
.....
(Signature)

Date:

For and on behalf of the Employer:

Signature(s) of authorized agent(s)

Date:.....

Name(s) _____

Capacity: **Chief Executive Officer**

for the **Employer:** **Mandela Bay Development Agency**
P O Box 74, PORT ELIZABETH, 6000

Witness:(Full name – in block letters – and signature)
(Name)

.....
(Signature)

Date:

C1.2: CONTRACT DATA (PART 1)

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

Copies of these conditions of contract may be obtained on the tenderer's own cost from the SAICE tel: 011-805 5947

PART 1 : CONTRACT SPECIFIC DATA PROVIDED BY THE EMPLOYER

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

No.	Clause	Description
1	1.1.1.13	The Defects Liability Period is 6 months , measured from the date of the Certificate of Completion.
2	1.1.1.14	The time for achieving Practical Completion is 16 weeks, calculated from the Commencement Date. (Define multiple times for achieving Practical Completions if the works are to be completed in portions as set out in the scope of Works.
3	1.1.1.15	Name of Employer is: MANDELA BAY DEVELOPMENT AGENCY , represented by the Chief Operations Execution : Ms Debbie Hendricks and/or such other person or persons duly authorised thereto by the Employer in writing.
4	1.1.1.16	The Employer's Agent is Giovanni Taft
5	1.1.1.26	The pricing strategy is: Re-measurement Contract
6	1.2.1.2	<p>The Employer's address for receipt of communications and notices is : MANDELA BAY DEVELOPMENT AGENCY Telephone: (0)41 811 8200 Address (Postal) : PO BOX 74 Address (Physical): 1st Floor, Tramways Building Corner Lower Valley Road & South Union Street PORT ELIZABETH 6000</p> <p>The Employer's Agent's address for receipt of communications and notices is : MANDELA BAY DEVELOPMENT AGENCY Telephone: (0)41 811 8200 Address (Postal) : PO BOX 74 Address (Physical): 1st Floor, Tramways Building Corner Lower Valley Road & South Union Street PORT ELIZABETH 6000</p>

No.	Clause	Description
7	3.2.3	<p>The Employer's Agent shall obtain specific approval from the Employer before executing any of his functions or duties according to the following Clauses of the General Condition of Contract:</p> <p>1. New Clause 3.2.3.1 "For expenditure on the Contract to exceed the Contract Price";</p> <p>2. Existing Clauses:</p> <p>3.2.1 - Nomination of person as Employer's Agent's Representative.</p> <p>5.6 – Approval of the programme</p> <p>5.7.2 - Work at night as well as by day</p> <p>5.8 – Non-working times</p> <p>5.12 - Granting of extension of time excluding Clause 5.12.2.2 (Abnormal climatic conditions)</p> <p>5.13 - Reduction of penalty for delay.</p> <p>5.14.2 - The issue of a Certificate of Practical Completion.</p> <p>5.14.4 - The issue of a Certificate of Completion.</p> <p>5.16.1 - The issue of a Final Approval Certificate.</p> <p>6.3 – Variations in respect of Variations which are not small (R20 000)</p> <p>6.6 - Instruction to expend on Provisional and Prime Cost Sums</p> <p>6.11 - Adjustment of General Items & Approval of Claims</p> <p>8.2.2.2 - Order to repair and make good damage arising from any "excepted" risk.</p>
8	3.2.4	<p>Occupational Health Practitioner from within client staff has been duly appointed as Client Agents on this contract, in terms of note (d) of the guidance notes of the Construction Regulations 2014 published in June 2017 of the Occupational Health and Safety Act 85 of 1993. The Principal Contractor shall perform a preliminary assessment of the project H&S Plan and submit the Plan to the Occupational Health Practitioner for review and approval for legal compliance prior to any works commencing. The duly appointed H&S Practitioner will also be responsible for further monitoring and auditing of the approved H&S Plan for updates and compliance throughout the contract duration.</p>
9	4.3.1	<p><u>Add the following</u> to the clause:</p> <p>"For conventional construction works the Basic Conditions of Employment Act of 1997 (Act No 75 of 1997) shall apply and the minimum employment conditions which will apply shall be guided by the latest Sectorial Determination: Civil Engineering Sector published from time to time.</p> <p>Compliance with the National Environmental Management Act (NEMA), Act 107 of 1998.</p> <p>Basic Conditions of Employment Act of 1997 (Act No 75 of 1997) as per Government Notice R63 of 25 January 2002, shall apply to works described in the Scope of Work as being labour intensive and which are undertaken by unskilled or semi-skilled workers."</p>

No.	Clause	Description
		<p>"The Contractor shall comply with the Occupational Health and Safety Specification prepared by the Employer in terms of the Construction Regulations, 2014 promulgated in terms of Section 43 of the Occupational Health and Safety Act (Act No. 85 of 1993).</p> <p>Without limiting the Contractor's obligations in terms of the Contract, the Contractor shall before commencement of the Works or any part thereof, be in the possession of an approved Health and Safety Plan."</p>
10	4.3.3 4.3.4 4.3.5	<p>Add the following new Clauses:</p> <p>"4.3.3 The Employer and the Contractor hereby agree, in terms of the provisions of Section 37(2) of the Occupational Health and Safety Amendment Act, 1993 (Act 85 of 1993), hereinafter referred to as 'the Act', that the following arrangements and procedures shall apply between them to ensure compliance by the Contractor with the provisions of the Act:</p> <p>(i) The Contractor undertakes to acquaint the appropriate officials and employees of the Contractor with all relevant provisions of the Act and the Regulations promulgated in terms of the Act.</p> <p>(ii)</p> <p>(iii) The Contractor undertakes that all relevant duties, obligations and prohibitions imposed in terms of the Act and Regulations on the Contractor will be fully complied with. The Contractor accepts sole liability for such due compliance with the relevant duties, obligations and prohibitions imposed by the Act and Regulations and expressly absolves the Employer from himself being obliged to comply with any of the aforesaid duties, obligations and prohibitions, with the exception of such duties, obligations and prohibitions expressly assigned to the Employer in terms of the Act and its associated Regulations.</p> <p>(iv) The Contractor agrees that any duly authorised officials of the Employer shall be entitled, although not oblige[d, to take such steps as may be necessary to monitor that the Contractor has conformed to his undertakings as described in paragraphs (i) and (ii) above, which steps may include, but will not be limited to, the right to inspect any appropriate site or premises occupied by the Contractor, or any appropriate records or safety plans held by the Contractor.</p> <p>(v) The Contractor shall be obliged to report forthwith to the Employer and Engineer any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the Act and Regulations, pursuant to work performed in terms of this Contract, and shall, on written demand, provide full details in writing, to the Employer and Engineer, of such investigation, complaint or criminal charge.</p> <p>4.3.4 The Contractor shall furthermore, in compliance with Constructional Regulations 2014 to the Act:</p> <p>(i) Acquaint himself with the requirements of the Employer's health and safety specification as laid down in regulation 5(1)(a)(b) of the Construction Regulation 2014, and prepare a suitably and sufficiently documented health and safety plan as contemplated in regulation 7(1)(a) of the Construction Regulation 2014 for approval by the Employer or his assigned agent. The Contractor's health and safety plan and risk assessment shall be submitted with the whole H&S file to the Employer for approval prior to site establishment and shall be implemented and maintained from the commencement of the Works.</p>

No.	Clause	Description
		<p>(ii) The Employer, or his assigned agent, reserves the right to conduct periodic audits, as contemplated in the Construction Regulations 2014, to ensure that the Contractor is compliant in respect of his obligations. Failure by the Contractor to comply with the requirements of these Regulations shall entitle the Engineer, at the request of the Employer or his agent, to suspend all or any part of the Works, with no recourse whatsoever by the Contractor for any damages incurred as a result of such suspension, until such time that the Employer or his agents are satisfied that the issues in which the Contractor has been in default have been rectified.</p> <p>4.3.5 The Contractor's Designer: The Contractor and his designer shall accept full responsibility and liability to comply with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and the Construction Regulations, 2014 for the design of the Temporary Works and those parts of the Permanent Works for which the Contractor is responsible to design in terms of the Contract"</p>
11	4.5	<p><u>Add the following</u> new Sub-Clauses:</p> <p>4.5.5 On the request of the Contractor, the Employer may, at his sole discretion, provide a support service to the Contractor in the giving of notices and in obtaining requisite consents, permissions and permits.</p> <p>4.5.6 On the request of the Contractor and certified by the Employer's Agent as payable by the Contractor, the Employer may, in his sole discretion, advance funds to the Contractor in the form of a cheque in favour of the relevant institution or body, to facilitate the Contractor in complying with the provisions of this Clause.</p> <p>The Contractor shall provide proof to the Employer's Agent of all payments effected by him.</p> <p>The Employer will deduct the sums advanced by the Employer and adjusted in accordance with the Contract Price Adjustment Formula or other rise-and-fall provision applicable to the Contract, from future payment certificates of the Contractor, if such sums are payable by the Contractor in the ordinary course of his business.</p> <p>The Employer will not advance funds in respect of cyclic sums payable by the Contractor in the ordinary course of his business.</p>
12	4.10.2.	<p>Add the following at the end of Clause 4.10.2:</p> <p>"The said information shall be reported on and delivered to the Engineer on a monthly basis and shall reach the Engineer's office by latest on the 20th day of each calendar month. A penalty shall be applied in terms of Clause 5.13 for failure by the Contractor to submit such information adequately and timeously."</p>
13	4.11.1	<p>Replace the first paragraph of Clause 4.11.1 with the following:</p> <p>"The Contractor shall employ on the Contract and on the Site, for the execution and completion of the Works, only such persons as are careful, competent and efficient in their several trades and callings."</p>

No.	Clause	Description
14	4.11.3	<p>Add the following new Clause:</p> <p>“4.11.3 Notwithstanding the wording of this Clause, on request of the Contractor the Employer may at his sole discretion, provide trade-skills training to the Contractor’s employees to improve their competency and efficiency commensurate with the requirements of the Works.”</p>
15	4.11.3	<p>Add the following to Clause 4.11</p> <p>Notwithstanding the wording of this Clause, on request of the Contractor the Employer may at his sole discretion, provide trade-skills training to the Contractor’s employees to improve their competency and efficiency commensurate with the requirements of the Works.</p>
16	5.3.1	<p>The documentation required before Commencement with Works are:</p> <ul style="list-style-type: none"> • Health and Safety Plan (Refer to Clause 4.3) • Initial programme (Refer to Clause 5.6) • Security (Refer to Clause 6.2) • Insurance (Refer to Clause 8.6) <p>Add the following to Clause 5.3.1 after the last sentence:</p> <p>“The Contractor shall commence executing the Works within twenty eight (28) days after the Commencement Date subject to:</p> <ul style="list-style-type: none"> (i) the Contractor having an approved project specific health and safety plan in terms of the Occupational Health and Safety Act 1993 and Construction Regulations and have complied with the initial requirements thereof, and (ii) the Contractor providing proof to the Engineer that the Employer as well as the Contractor have complied with the requirements and conditions of Clause 8.6 (Insurances).”
17	5.3.2	<p>The Contractor is required prior to any Work commencement (including site establishment) to submit the documents listed below to the Employer’s Agent for his approval.</p> <p>Health and Safety Plan The Contractor shall deliver his health and safety plan, in terms of Clause 7(1)(a) of the Construction Regulations 2014.</p> <p>The Contractor is required, within 14 days of the Commencement Date, to submit the documents listed below to the Employer’s Agent for his approval.</p> <p>Initial Programme The Contractor shall deliver his Initial Programme of work in term of Clause 5.6</p> <p>Security Submit a guarantee of an Insurance Company or Bank to be jointly and severally bound with the Contractor for an amount equal to ten per cent (10%) of the Contract Price. The wording of the Guarantee shall be identical to the pro forma provided in Part C1.3 of this tender document. In addition, retention of 5% will be deducted on all payment certificates up until the appointment value. The retention of 2.5% will be released upon final completion, whereby the remainder will be released once the defects liability period has lapsed.</p>

No.	Clause	Description
		<p>Insurance</p> <p>Submit copies of receipts of registration, or payment for the premiums for the following insurances, as required by the new Clause 8.6 in this Contract Data.</p> <ul style="list-style-type: none"> (a) Proof of registration with the Department of Labour as an employer, in terms of the Compensation for Occupational Injuries and Diseases Act 1993, as amended (b) Common Law Liability Insurance for the duration of the Contract Period and with a minimum Limit of Indemnity of not less than R1 000 000 for any one accident; (c) Insurance on an All Risks basis for construction plant, equipment and other things (except those intended to incorporation into the works) brought onto the site to the full value of such construction plant, equipment and other things; (d) Motor Vehicle Liability Insurance, comprising a minimum of Balance of Third Party motor risks, including Passenger Liability, subject to a minimum limit of R2,5 million; (e) Where the Contract involves manufacturing and/or fabrication of the works or part thereof at premises other than the site, the Contractor shall satisfy the employer that all materials and equipment for incorporation in the works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication, then such interest shall be noted by endorsement to the Contractor's Policies of Insurance. (f) Imported equipment or component parts or materials to be supplied in terms of this Contract which require any process of assembly or finishing in South Africa prior to delivery to the site are to be insured by the Contractor up to the commencement of transit to site of the assembled or finished equipment, component parts or materials, unless special arrangements are made with the Employer. <p>These insurances shall be maintained in force for the duration of the Contract, including any Defects Liability Period and in respect of Sub-Contractors, the Contractor shall be deemed to have complied with the provisions of the requirements relating to insurance by ensuring that the Sub-Contractors have effected such insurance.</p>
18	5.4.2	<p>The access and possession of Site shall not be exclusive to the Contractor but as set out in the Site Information.</p> <p>The Contractor shall bear all costs and charges for special and temporary rights of way required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.</p>
19	5.8.1	<p>Delete the words "between sunset and sunrise" in the first line and replace with "outside normal working hours".</p> <p>Normal working hours shall be those as stated in the applicable Sectoral Determination applicable to a 5 (five) day week</p> <p>Non-working days are Saturdays and Sundays and special non-working days are public holidays and official builder's holidays.</p>
20	5.8.3	<p>Add the following new Clause:</p> <p>"The additional cost of supervision and monitoring by the Engineer or his representatives, outside non-working times, in accordance with Clause 5.8.1 shall be for the Contractor's account."</p>

No.	Clause	Description
21	5.12.2.2	<p>Add to Clause 5.12.2.2:</p> <p>The time period specified as the time for completion includes allowances for those days on which it is expected that work, on the critical path items of the works, would be prevented due to weather conditions such as wind, rain falling or the subsequent waterlogged condition. Based on average weather conditions of wind, rain and sunshine the allowances are:</p> <ul style="list-style-type: none"> • 3 working days per month for the months of May to October • 2 working days per month for the months of November to April <p>If the Contractor has been prevented by these weather conditions from working on the critical path items of the works, then he must notify the Employer's Agent in writing. The submission shall be made within five calendar days of the resumption of work. The Employer's Agent shall upon considering all the relevant factors determine the extension of time to be granted on the basis that an extension of time to the contract will only be granted if the total number of days upon which work on the critical items was prevented, exceeds the total number of days calculated in terms of the above allowance and considering the official contract period as a whole.</p> <p>The tendered sums of the appropriate time-related items shall be increased to take account of the extensions of time granted.</p>
22	5.12.5	<p>Add the following to Clause 5.12</p> <p>5.12.5 Critical Path Provision</p> <p>A delay in so far as extension of time is concerned, will be regarded as a delay only if, on a claim by the Contractor in accordance with the General Conditions of Contract, the Employer's Agent rules that all progress on an item or items of work on the critical path of the approved programme for the execution of the Works by the Contractor, has been brought to a halt. Delays on normal working days only, based on a working week, of five normal working days, will be taken in account for the extension of time.</p>
23	5.13.1	<p>The penalty applicable to and be applied against each phased or proportional completion of the Permanent Works as may be specified in terms of the requirements of the Contract Data and Scope of Work."</p> <ul style="list-style-type: none"> • R 2 000 per calendar day <p>Add the following at the end of Clause 5.13.1:</p> <p><u>"For non compliance with submitting EPWP Reports And Labour sheets and ID's, the penalty will be as follows :</u></p> <p>If the Contractor shall, in terms of Clause 4.10.2, fail to deliver the information (monthly EPWP Report and Labour sheets and ID's) timeously and adequately, the Contractor shall be liable to the Employer for the sum calculated by the Engineer as a penalty for every calendar day which shall lapse between the monthly due date and the actual date of receiving such information.</p> <p>The penalty shall be R500 per calendar day.</p> <p><u>For non compliance with OHS requirements, the penalty will be as follows :</u></p> <p>Per occurrence – R 5000-00</p> <p>Per day after the occurrence until satisfactory remedied in order to meet compliance - R 1000-00 per day</p>

No.	Clause	Description
		<p><u>For non compliance with Micro Enterprises (SMME) targets, the penalty will be as follows :</u></p> <p>Should the contractor fail to meet the minimum requirement of subletting at least 40% of the Contract value to Micro Enterprises (SMME's emerging sub - contractors), a penalty of 1,2 * the value of the amount to be sublet, minus the actual value sublet, will be implemented. This amount will be deducted from the Contractor's payment certificate.</p> <p><u>For non compliance with Local Labour targets, the penalty will be as follows :</u></p> <p>Should the contractor fail to meet the minimum requirement of creating 10 employment opportunities on site for the duration of the contact, a penalty of 1,5 * the value of the amount of employment that was not created, calculated at R180-00 per day per person, will be calculated and imposed. This amount will be deducted from the Contractor's payment certificate. "</p>
24	5.14.2	<p>Replace the wording ' : 'the Employer's Agent" in the second line of the clause 5.14.2 with the following:</p> <p>'the Contractor shall notify the Employer's agent, who shall inspect the Works and the Employer's Agent"</p>
25	5.14.4	<p>Add following Clause 5.14.4:</p> <p>'The work listed in terms of Clause 5.14.2 shall however be completed within 21 days from the date of issue of Certificate of Practical Completion".</p> <p>Should the contractor fail to complete all the works listed within the stated period of 21 days the date of issue for the Certificate of Practical Completion shall be amended and extended in respect of the outstanding work by the amount of additional time taken by the Contractor to complete all such works.</p>
26	5.14.5.5	<p>Delete Clause 5.14.5.5 and replace with:</p> <p>Insurance of the works shall continue until the expiration of the Defects Liability Period, in terms of the new Clause 8.6 contained in this Contract Data.</p>
27	5.16.3	<p>The latent defect period is 10 years.</p>
28	6.2.1	<p>Replace the wording "as selected" in Clause 6.2.1 with "as stated".</p> <p>The security to be provided by the Contractor shall be:</p> <ul style="list-style-type: none"> • a performance guarantee of ten per cent (10%) of the Contract Sum, plus • retention money amounting to five per cent (5%) of the Contract Price. <p>Retention monies due shall be subjected to Clauses 6.10.1.3 and 6.10.3.</p> <p>The performance guarantee shall be from an approved Insurance Company or Bank to be jointly and severally bound with the Contractor, in accordance with the provisions of the Form of Guarantee. A Retention Money Guarantee is not permitted.</p>
29	6.2.2	<p>Replace the entire contents of Clause 6.2.2 with the following:</p> <p>"If the Contractor fails in his obligations to provide the stated security within the period stated in Clause 5.3.2, or if the performance guarantee shall differ from the pro-forma provided</p>

No.	Clause	Description
		under Clause C1.3: Form of Guarantee of the Contract Data, the Employer may terminate the Contract in terms of Clause 9.2."
30	6.2.3	Replace the entire contents of Clause 6.2.3 with the following: "The Contractor shall ensure that the performance guarantee remain valid and enforceable until the issue of the Certificate of Completion."
31	6.8.2	Contract Price Adjustment will not apply
32	6.10.1.5	The percentage advance on materials on site not yet built into the Permanent Works is 80%.
33	6.10.3	Replace the entire contents of Clause 6.10.3 with the following: "Payment of the amounts referred to in Clauses 6.10.1.1, 6.10.1.2, 6.10.1.3 and 6.10.1.4 shall be subject to a retention by the Employer of an amount (called the "retention money"), being the percentage retention stated in the Contract Data, of the said amounts due to the Contractor, until the retention money reaches the "Limit of retention money" stated in the Contract Data." The percentage retention shall be ten per cent (10%) of payments due up to the "Limit of retention money" which shall be five per cent (5%) of the Contract Price, excluding Value Added Tax.
33	6.10.4	Replace the wordings "within 7 days" and "within 28 days" in Clause 6.10.4 with the wording "within 5 working days: and "within 30 days".
34	6.10.6.2	Replace Clause 6.10.6.2 with the following new Clause 6.10.6.2: 6.10.6.2 No interest shall be payable to the Contractor upon any moneys retained or overdue in terms of the Contract.
35	7.2.1	Add the following at the end of Clause 7.2.1 Unless otherwise directed in writing by the Employer's Agent, all materials for the Permanent work shall be new and unused".
36	7.8.2.2	Replace the wording: "if carries out by the Contractor " in the second line Clause 7.8.2.2 with following: If carried out by the Contractor and subject to the Employer's Agent agreement and with written authorisation"
37	8.6 8.6.1	Delete Clause 8.6. and replace with the following: Notwithstanding the provisions contained in the General Conditions of Contract regarding insurance, and without limiting the obligations, liabilities and responsibilities of the Contractor in any way whatsoever and on the understanding that the Contractor is not relieved from his obligations towards the Employer regarding the provision (by the Contractor) of any other insurances, the Employer shall effect and maintain for the duration of the Contract until the expiry of the Defects Liability Period, including initial transit to the Contract site ⇒ Contract Works Insurance (including SASRIA Insurance) and ⇒ Public Liability (Third Party) Insurance both in the joint names of the Employer and the Contractor (including all Sub-Contractors whether nominated or otherwise), and those on whose behalf the Employer has authority to

No.	Clause	Description
		<p>arrange insurance. The Contractor shall pay for all deductibles incurred as a result of claims made under the Contract.</p> <p>The Policy will be subject to the normal Terms, Exceptions and Conditions applicable to such insurance and will provide the following cover:</p> <p><u>Section 1 – The Contract Works</u></p> <p>(a) The Contract Works to be undertaken in terms of the Insured Contract, including all temporary works erected or in the course of erection and all materials for incorporation therein.</p> <p>“Temporary Works” shall mean all constructional aids, equipment or structures (not being part of the permanent works) used or intended for use on the Insured Contract and which</p> <p>(i) do not comprise mobile plant,</p> <p>(ii) the Insured does not intend to remove from the Contract Site on completion of the Contract, and/or</p> <p>(iii) have no residual value at the completion of the Contract (other than scrap value) solely due to their specialized nature,</p> <p>to the extent that the value has been included in the Contract price.</p> <p>(b) Surrounding property (as defined in the Policy) not included in nor forming part of the property insured under Item 1 above.</p> <p><u>Section 2 – Contract Liability</u></p> <p>Indemnity against the insured parties legal liability in the event of accidental death of or injury to third party persons and/or accidental loss of or damage to third party property arising directly from the execution of the contract.</p> <p>THE SUMS INSURED/LIMIT OF LIABILITY</p> <p>SECTION 1 – CONTRACT WORKS</p> <p>(a) Property insured under Section 1(a) The Contract Works</p> <p>The Agreed and Accepted Contract Value (subject to a maximum of R100M) in respect of any one Contract plus a maximum of 25% escalation, unless the Insurers’ agreement to amend these limits is obtained in writing.</p> <p>(b) Property insured under Section 1(b) Surrounding Property</p> <p>R2,500,000 each and every loss</p> <p>SECTION 2 - CONTRACT LIABILITY</p>

No.	Clause	Description																		
		<p>Limit of Indemnity R20,000,000 (Twenty Million Rand) for any one occurrence or series of occurrences arising out of one event.</p> <p>EXCLUDED CONTRACTS</p> <p>The following Contracts are specifically excluded from the “blanket” cover arranged by the Employer, and insurance cover will not be arranged by the Employer. The Employer shall arrange with the Insurer for specific insurance cover for these contracts, and shall confirm such arrangement and all specific Terms & Conditions of such policy with the Contractor in writing.</p> <ol style="list-style-type: none"> Any Contract with a Contract Price at award of over R100,000,000 Any Contract with a construction period at award exceeding 24 months Any Contract with a Maintenance or Defects Liability Period exceeding 12 months Any Contract involving <ol style="list-style-type: none"> Underground Mine or Colliery Working’ Tunneling Foul Berthing Stevedoring Work “Wet” work at or about or connected with dams, docks, harbours, piers, breakwaters or otherwise involving construction in water <p>THE DEDUCTIBLES</p> <p>The first amount payable by the Insured in respect of each and every occurrence giving rise to a claim under the Policy shall be as follows:</p> <p>(A) <u>STANDARD BUILDING CONTRACTS</u></p> <table border="1"> <thead> <tr> <th></th><th>Description</th><th>Excess</th></tr> </thead> <tbody> <tr> <td>A1</td><td>Contract Value up to R10M</td><td>R 10,000</td></tr> <tr> <td>A2</td><td>Contract Value above R10M up to R25M</td><td>R15,000</td></tr> <tr> <td>A3</td><td>Contract Value above R25M</td><td>R25,000</td></tr> </tbody> </table> <p>(B) <u>CIVIL & ALL OTHER CONTRACTS</u></p> <table border="1"> <thead> <tr> <th></th><th>Description</th><th>Excess</th></tr> </thead> <tbody> <tr> <td>B1</td><td>Contract Value up to R1M</td><td>0.25% of claim minimum</td></tr> </tbody> </table>		Description	Excess	A1	Contract Value up to R10M	R 10,000	A2	Contract Value above R10M up to R25M	R15,000	A3	Contract Value above R25M	R25,000		Description	Excess	B1	Contract Value up to R1M	0.25% of claim minimum
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No.	Clause	Description
		<p>(c) negotiate the settlement of claims with the Insurers through the Employer's Insurance Brokers, subject to the settlement being approved by the Employer.</p> <p>The Employer and Insurers shall have the right to make all and any enquiries, either on the site or elsewhere, as to the cause and results of any such occurrence and the Contractor shall give full facilities for carrying out such enquiries.</p>
	8.6.4	<p>Any amount which becomes payable as a result of a claim by the Contractor under the insurance effected by the Employer shall be paid net of the deductibles to the Employer, who shall pay the said amount to the Contractor upon rectification, repair or reinstatement of the loss or damage, but this provision shall not in any way affect the Contractor's obligations, liabilities and responsibilities in terms of the Contract.</p>
	8.6.5	Submission of a Tender shall be deemed as acceptance by the Contractor that he is satisfied with the scope of the insurances effected by the Employer
	8.6.6	<p>The Contractor and/or Sub-Contractor shall provide, as a minimum, the following:</p> <p>(a) Proof of registration with the Department of Labour as an employer, in terms of the Compensation for Occupational Injuries and Diseases Act 1993, as amended</p> <p>(b) Common Law Liability Insurance for the duration of the Contract Period and with a minimum Limit of Indemnity of not less than R1 000 000 for any one accident;</p> <p>(c) Insurance on an All Risks basis for construction plant, equipment and other things (except those intended to incorporation into the works) brought onto the site to the full value of such construction plant, equipment and other things;</p> <p>(d) Motor Vehicle Liability Insurance, comprising a minimum of Balance of Third Party motor risks, including Passenger Liability, subject to a minimum limit of R2,5 million;</p> <p>(e) Where the Contract involves manufacturing and/or fabrication of the works or part thereof at premises other than the site, the Contractor shall satisfy the employer that all materials and equipment for incorporation in the works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication, then such interest shall be noted by endorsement to the Contractor's Policies of Insurance.</p> <p>(f) Imported equipment or component parts or materials to be supplied in terms of this Contract which require any process of assembly or finishing in South Africa prior to delivery to the site are to be insured by the Contractor up to the commencement of transit to site of the assembled or finished equipment, component parts or materials, unless special arrangements are made with the Employer.</p> <p>These insurances shall be maintained in force for the duration of the Contract, including any Defects Liability Period and in respect of Sub-Contractors, the Contractor shall be deemed to have complied with the provisions of the requirements relating to insurance by ensuring that the Sub-Contractors have effected such insurance.</p>
	8.6.7	
	8.6.8	<p>The Contractor may effect, at his own cost, any insurance additional to that effected by the Employer which he deems necessary in his own interests. The Employer reserves the right to call for full information regarding such insurances.</p> <p>The insurances to be provided by the Contractor and Sub-Contractor shall be effected</p>

No.	Clause	Description
	8.6.9	with Insurers and on terms approved by the Employer (which approval shall not be unreasonably withheld) and the Contractor shall, if required by the employer, produce to the employer the Policy or Policies of insurance and the receipts for payment of the current premiums.
	8.6.10	If the Contractor fails to effect and keep in force the insurances referred to, then the employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and, from time to time, deduct the amount paid by the Employer from any monies due or which may become due to the Contractor or recover same as a debt from the Contractor.
	8.6.11	<p>where the Contractor is responsible for the appointment of Sub-Contractors, then the Contractor shall</p> <p>(a) ensure that potential and appointed Sub-Contractors are aware of the whole content of this Special Conditions of Contract Clause; and</p> <p>(b) ensure the compliance of Sub-Contractors with this Special Conditions of Contract clause, where applicable.</p> <p>The Contractor warrants that he shall give all notices and shall observe all the Terms and Conditions and requirements of all insurances applicable to this Contract.</p>
38	9.1.4	<p>Replace Clause 9.1.4 with the following:</p> <p>Up to the time of termination of the contract by either party in terms of this Clause, or until the Contractor gives notice in terms of this Clause to terminate the contract and the Contractor is precluded from exercising his right to terminate the contract because the Employer agrees to bear any resultant additional costs provided for in Clause 9.1.2.2 hereof, the Contractor:</p> <p>a) will be entitled to an extension of calendar time for working days lost as may be approved by the Employer's Agent, and</p> <p>b) will be reimbursed the cost of delays per working day, where the number of working days will be determined pro rata the effect the delays have on the progress of the work as agreed with the Employer's Agent. Payment in full and final settlement will be made at the rates tendered for the payment items specially provided in the Bill of Quantities (Items A2.1 to A2.7)</p> <p>Where the circumstances described in Clauses 9.1.1 and 9.1.2 are applicable only to a certain portion of the contract, the Employer's Agent will decide after consulting the Contractor, to what extent the contract as a whole is affected and whether or not a claim in terms of this Clause can be submitted.</p> <p>No payment will be made in terms of this Clause after the expiry of the due completion date.</p>
39	10.1.1.1.1	<p>Add the following to Clause 10.1.1.1</p> <p>Should the claim be related to work stoppages by either the EMEs or the local community, no extension of time will be granted without a South Africa Police Service case number for threats or intimidation against the parties involves.</p>
40	10.3.2	Amicable settlement in terms of Clause 10.4 shall be contemplated for all disputes prior to referring any dispute to adjudication or arbitration.
41	10.5.1	Dispute resolution shall be by ad-hoc adjudication
42	10.5.3	The number of Adjudication Board Members to be appointed one (1).
43	10.7.1	The determination of disputes which are unresolved in terms of Clause 10.5.3 shall be by arbitration.

No.	Clause	Description
44	11.	<p>Add the following additional clause:</p> <p>Details to be confidential</p> <p>The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Employer's Agent.</p>
45	11.	<p>Add the following additional clause:</p> <p>Details to be confidential</p> <p>The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Employer's Agent.</p>

1.2 : CONTRACT DATA (PART 2)

PART 2 : DATA PROVIDED BY THE CONTRACTOR

No.	Clause	Description
1	1.1.1.9 1.2.1.2	The Contractor is: The Contractor's address for receipt of communications and notices is : Telephone: Facsimile: Address (Postal) : Address (Physical) :
2	6.5.1.2.3	The percentage allowance to cover overhead charges is%