

RFQ No:TMT-DBE-23/24-KZNSAFE5GEO-KZNCL1-5

**Department of Basic Education's Sanitation Appropriate for
Education (SAFE)**

**Appointment of Service Providers to undertake geotechnical
investigations at various schools for the
Implementation of Sanitation Programme at various
schools in Kwa-Zulu Natal Province**

(CLUSTER 1 – 5)

Issued by:

The Mvula Trust
07 Pearce Crescent
The Park, Unit F1
Empangeni
3880

Contact

Mduduzi Ntuli

Tel: +27 11 403 3425

Email: MduduziN@themvulatruster.org.za

Summary Offer for Clusters 1-5	
Name of Bidder	
Cluster	Offer Amount (Vat Inclusive) carried forward from Form C1.1
1	R
2	R
3	R
4	R
5	R

Specific Goals Claimed	Level
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Contents	
Number	Heading
Part T1: Tendering procedures	
T1.1	Notice and invitation to submit quotations
T1.2	Tender data
Part T2: Returnable documents	
T2.1	List of returnable documents
T2.2	Returnable schedules
Part C1: Agreements and contract data	
C1.1	Form of Offer and Acceptance
C1.2	Contract Data
Part C2: Pricing data	
C2.1	Pricing Instructions
C2.2	Activity Schedule
Part C3: Scope of Work	
C3	Scope of Work
Part C4: Site information	
C4	Site Information

Part T1: Tendering procedures

T1.1 Notice and Invitation to Submit Quotations

The Mvula Trust, Empangeni office invites Service Providers to undertake geotechnical investigations at various schools for the Implementation of Sanitation Programme in Kwa-Zulu Natal Province. The schools form part for the Department of Basic Education's Sanitation Appropriate for Education (SAFE)

The duration to undertake the fieldwork and submit the geotechnical reports is twenty-one (21) working days for all the cluster schools. The service provider should deploy adequate resources to be able to meet the timelines.

Service provider will be appointed as sub-consultants by the main PSPs.

You are hereby invited to submit a proposal to The Mvula Trust, in Empangeni, Kwa-Zulu Natal at the following address

Address:

07 Pearce Crescent
The Park ,Unit F1
Empangeni
3880

Tender documents will be available) on the National Treasury e-tender portal for downloading and self-printing from 08:00am on **Thursday, 25 May 2023**.

No Compulsory briefing meeting will be held.

The closing time for the receipt of quotations is **12h00 hrs, Thursday, 01 June 2023**. All responses must be deposited in the tender box at the Office of The Mvula Trust., situated, at 07 Pearce Crescent, The Park, Unit F1, Empangeni, 3880. Telegraphic, telephonic, telex, facsimile, e-mail and late responses will not be accepted. **The bidder will not be awarded more than one cluster.**

Quotations may only be submitted on the tender (RFQ) documentation that is issued.

Requirements for sealing, addressing, delivery, opening and assessment of responses are stated in the Tender Data.

The Mvula Trust reserves the right to withdraw any request for quotations and/or to re-advertise or to reject any tender or to accept a part of it. The Mvula Trust does not bind itself to accepting the lowest tender. Bidders may not be appointed for more than 2 clusters. Where a bidder scores highest points in more than 2 clusters they will be preferably considered for appointment on clusters with highest value.

This tender will be evaluated according to the Preference Point system in terms of PPPFA: 80/20 Preference point scoring system

Enquiries:

All enquiries regarding this tenders must be forwarded to: Email: Mduduzi@themvulatrust.org.za with the applicable Bid No. as the subject.

All technical enquiries regarding this tender must be forwarded to: Email: mziwoluntu@themvulatrust.org.za with the applicable Bid No. as the subject

T1.2 Tender Data

The conditions of tender are the Standard Conditions of Tender as contained in Annex C of CIDB Standard for Uniformity in Engineering and Construction Works Contracts (August 2019). This standard is issued in terms of sections 4(f), 5(3)(c) and 5(4)(b) of the Construction Industry Development Board Act 38 of 2000 read with Regulation 24 of the Construction Industry Development Regulations, 2004 (as amended) issued in terms of section 33. (See www.cidb.org.za).

The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies.

Clause number	Tender Data
C.1.2	The Tender Documents issued by The Mvula Trust comprise the following documents: THE TENDER Part T1: Tendering procedures T1.1 - Tender notice and invitation to tender T1.2 - Tender data Part T2: Returnable documents T2.1 - List of returnable documents T2.2 - Returnable schedules THE CONTRACT Part C1: Agreements and Contract data C1.1 - Form of offer and acceptance C1.2 - Contract data Part C2: Pricing data C2.1 - Pricing instructions C2.2 - Activity Schedule for Value Based Fees Part C3: Scope of work C3 - Scope of work Part C4: Site information C4 - Site information
C.1.4	The Mvula Trust's agent is: Mziwoluntu Mazibu Tel: 035 772 2552 Email: mziwoluntu@themvulatrust.org.za
C.1.6.2.1	The Mvula Trust will not announce the names of the tenderers who make a submission.
C.1.6.3	The two stage-system proposal procedure shall not apply.

C.2.1	Eligibility Only suitably qualified tenderers who are registered with South African Council for Natural Scientific Professionals (SACNASP) as Professional Geologist (Pr.Sci.Nat. Geologist) or Geotechnical Engineer/ Geotechnical Technologist registered with Engineering Council of South Africa (ECSA) are eligible to submit tenders. The appointed service provider should deploy adequate resources to be able to meet the timelines. The core team should consist of the following minimum staff per cluster: 1. Registered Professional Geologist or Geotechnical Engineer/ Geotechnical Technologist. Failure to provide the same or equivalent or better during implementation could result in the cancellation of the appointment, TMT reserves the right to, upon cancellation, recover associated costs due to this appointment. The service provider should at least provide 3 letters from the soils laboratory companies who are SANAS accredited that will be doing the sampling & testing work confirming that soils laboratories have the capacity to undertake the work within the given timeframes
C.2.13.1	All the parts of each tender offer communicated on paper shall be submitted as an original
C.2.13.2	Return all returnable documents to The Mvula Trust after completing them in their entirety, in hard copies written legibly in non-erasable ink.
C.2.13.3	Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by The Mvula Trust.
C.2.13.9	Only submissions submitted in the tender box will be accepted. Tender offers submitted by facsimile or e-mail will be rejected by The Mvula Trust.
C.3.1.2	The Mvula Trust will consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the requirements used to pre-qualify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence: a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements; b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or c) in the opinion of The Mvula Trust, acceptance of the material change would compromise the outcome of the prequalification process.
C.3.3	Tender offers received after the closing time stated in the Tender Data will not be returned.
C.3.4.2	The name of each tenderer whose tender offer is opened will not be announced in public.
C.3.5	A two-envelope procedure will not be followed

C.3.11	The tenders will be evaluated for price and preference. Apply the 80/20 Preference Point system where a maximum of eighty (80) points will be awarded for price and twenty (20) points will be awarded for Specific Goals Claimed. Scoring for quality will not apply for this tender however and Risk Assessment will be conducted for all eligible Tenderers, after price and preference evaluation. Risk assessment will be evaluated on the following: - Price offered does not pose risk to completion of the project - Quality of work provided by Service provider to other clients As part of risk assessment the Bidders give The Mvula Trust the right to request for enquiries from previous and/or current employers about bidders performance
C.3.12	The tenderer should submit the proof of professional indemnity as part of returnable schedules. Non-submission will result in disqualification of tenderer.
C.3.13	For a tender to be compliant, a tenderer must ensure that: a) the tenderer submits a valid Tax Clearance Certificate and PIN issued by the South African Revenue Services or has made arrangements to meet outstanding tax obligations; b) the tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector; c) the tenderer has not: i. abused The Mvula Trust's Supply Chain Management System; or ii. failed to perform on any previous contract and has been given a written notice to this effect; iii. Is not considered to be posing a risk to completion of the projects in terms of risk assessment d) the tenderer has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the employer or potentially compromise the tender process. Persons in the employment of the state are not permitted to submit tenders or participate in the contract; e) the tenderer is registered and in good standing with the compensation fund or with a licensed compensation insurer; f) The Mvula Trust is reasonably satisfied that the tenderer has in terms of the Construction Regulations, 2014, issued in terms of the Occupational Health and Safety Act, 1993, and prove that he/she is in a process to register with SACPCMP including the necessary competencies and resources to carry out the work safely. g) Has submitted all the required returnable documents as stated in the tender data. h) The tenderer has not been terminated by other employers due to poor performance. The Bidders give The Mvula Trust the right to enquire from previous employers about bidders performance

T.2.1 List of compulsory returnable documents

2. The Respondent must complete and submit the following returnable schedules as relevant.

Returnable schedules T.2.2 F1, F2 and F3

- T2.2.A: Record of Addenda to Tender Documents
- T2.2.B: Compulsory Questionnaire (must be fully completed)
- T2.2.C: Authority of JVs (If Applicable)
- T2.2.D: Proposed amendments and qualifications
- T2.2.E: Schedule of Current Projects (must be fully completed for risk assessment)
- T2.2.F1: Returnable schedule - Proposed project team and staffing with CV's to establish work experience for Risk Assessment.(Annexure C)
- T2.2.F2: Returnable schedule - Provide certified copy of Professional Registration certificate and technical qualifications (if not attached tenderer will be disqualified)

- C1.1 Form of Offer and Acceptance **(Failure to complete and sign will result into disqualification.)**
- SBD 4: Bidder's disclosure.
- Valid Tax Compliance Status Pin. (Validity will be verified online- during supply chain management processes)
- Certified Copy of Company Registration Annexure B)
- COIDA
- Central Supply Database Registration (CSD) Annexure E)
- 3 x Supporting letter from Soils laboratories (Annexure F)

3. Other returnable schedules that will be used to for evaluation purposes

- C1.1 Form of Offer and Acceptance

4. Returnable schedules that will be used for tender evaluation purposes and be incorporated into the contract

- C1.1 Form of Offer and Acceptance

5. Other documents that will be incorporated into the contract

- T2.2.C: Authority of JVs (If Applicable)
- T2.2.D: Proposed amendments and qualifications
- T2.2.F1: Returnable schedule - Proposed project team and staffing
- T2.2.F2: Returnable schedule - Professional and Technical Qualifications Schedule
- C1.1 Form of Offer and Acceptance
- C1.2 Contract data
- C 3 Scope of Work
- C4 Site Information

T 2.2.A - Record of Addenda to tender documents

We confirm that the following communications received from The Mvula Trust before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer: Addenda to be attached with tender documents is compulsory.

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed		Date	
Name		Position	
Tenderer			

T 2.2. B - Compulsory Enterprise Questionnaire

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1: Name of enterprise:

Section 2: VAT registration number, if any:

Section 3: CIDB registration number, if any:

Section 4: Particulars of sole proprietors and partners in partnerships

Name*	Identity number*	Personal income tax number*

* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

Section 5: Particulars of companies and close corporations

Company registration number

Close corporation number

Tax reference number

Section 6: Record in the service of the state

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- | | |
|--|---|
| ☐ a member of any municipal council | ☐ an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| ☐ a member of any provincial legislature | ☐ a member of an accounting authority of any national or provincial public entity |
| ☐ a member of the National Assembly or the National Council of Province | ☐ an employee of Parliament or a provincial legislature |
| ☐ a member of the board of directors of any municipal entity | |
| ☐ an official of any municipality or municipal entity | |

If any of the above boxes are marked, disclose the following:

Name of sole proprietor, partner, director, manager, principal shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

Section 7: Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months been in the service of any of the following:

- | | |
|--|---|
| ☐ a member of any municipal council | ☐ an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| ☐ a member of any provincial legislature | ☐ a member of an accounting authority of any national or provincial public entity |
| ☐ a member of the National Assembly or the National Council of Province | ☐ an employee of Parliament or a provincial legislature |
| ☐ a member of the board of directors of any municipal entity | |
| ☐ an official of any municipality or municipal entity | |

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- authorizes The Mvula Trust to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed		Date	
Name		Position	
Enterprise name			

T 2.2. C - Certificate of Authority for Joint Ventures

This Returnable Schedule is to be completed by joint ventures.

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms
 , authorised signatory of the company
 , acting in the capacity of lead partner, to sign all
 documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY SIGNATORY	AUTHORISED
Lead partner 		Signature. Name Designation	
 		Signature. Name Designation	
 		Signature. Name Designation	
 		Signature. Name Designation	

T 2.2. D - Proposed amendments and qualifications

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause F.3.8 of the Standard Conditions of Tender referenced in the Tender Data regarding The Mvula Trust's handling of material deviations and qualifications.

Tenderers must not include deviations or qualifications relating to the scope of work in this schedule where they are required to submit an Approach Paper.

Page	Clause item	or	Proposal

Signed		Date	
Name		Position	
Tenderer			

T 2.2. F1 - Returnable Schedule: - Proposed Organisation and Staffing

The core team should consist of the following minimum staff per cluster:

1. Registered Professional Geologist or Geotechnical Engineer/Technologist

The core staff is required to be fully involved on the projects. The tenderer must attach his/her organization and staffing proposals to this page.

Name of Key person / expert	Position in Consultant team (e.g. Registered Geologist)	Specific duties (e.g. Manage Project)
1		
2		
3		
4		
5		
6		
7		
8		

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my belief both true and correct.

Signed		Date	
Name		Position	
Tenderer			

T2.2.F2: Proposed Team Member Qualifications outlined in the Table below

PROPOSED TEAM MEMBERS							
DESCRIPTION	Name of Proposed Key Personnel	Qualification	Professional Number correspond Professional Certificate)	Registration (Should with Registration	No. of years post qualification (Should correspond with number of years' experience as per CV)	No. of years post professional registration	Registration Certificate attached (Y/N)

ANNEXURE A

**VALID TAX CLEARANCE CERTIFICATE AND TAX PIN (PLEASE INSERT
TAX PIN HERE)**

ANNEXURE B

Insert Copy of Company Registration

ANNEXURE C

Insert Proposed Organisation and staffing Arrangements

- Indicate Name and Surname of Team members
- Indicate position of Team members and their role in the project technical
- Include CV's of all Team members

****The above will be used for Risk Assessment**

ANNEXURE D

Current Projects

Name of Project	Client	Original project Duration (months)	Current Project Status	Date when started	Planned or Actual Completion date

**The above will be used for Risk Assessment

ANNEXURE E

**Insert Proof of Central Supplier Database Registration Form- FULL CSD
REPORT (not older than 30 days)**

ANNEXURE F

3 x Supporting letter from Soils laboratory

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....

3 DECLARATION

I, _____ the _____ undersigned,
 (name).....in
 submitting the accompanying bid, do hereby make the following
 statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

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

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....	
Signature	Date
.....	
Position	Name of bidder

C1.1 Form of Offer and Acceptance – Cluster 1

C1: AGREEMENT AND CONTRACT DATA

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

GEOTECHNICAL INVESTIGATION SERVICES

APPOINTMENT OF SERVICE PROVIDERS TO UNDERTAKE GEOTECHNICAL INVESTIGATIONS OF SCHOOLS IN THE KWA-ZULU NATAL PROVINCE

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

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

The offered price for the Geotechnical Investigation Services, inclusive of value added tax (Carried over from C2.2.2), is

R (in figures)

..... Rand (in words)

.....% in Words

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

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

Failure of the Tenderer to sign this form shall invalidate the Tender.

Acceptance

By signing this part of this form of offer and acceptance, The Mvula Trust identified below accepts the tenderer's offer. In consideration thereof, The Mvula Trust 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 Mvula Trust 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

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 Mvula Trust during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall deliver the securities in terms of, Clause 5.4.1 Standard Professional Services Contract (July 2009) third edition, within the period stated in the Contract Data, and after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact The Mvula Trust's agent (whose details are given in the contract data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data, within 21 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any).

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

By the duly authorized representatives signing this agreement, The Mvula Trust 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 Mvula Trust during this process of offer and acceptance.

Signature <i>Of person authorised to sign on behalf of The Mvula Trust</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	The Mvula Trust
Address <i>Physical address</i>	07 Pearce Crescent The Park, Unit F1 Empangeni 3880
Telephone no	(035) 772 2552
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

C1.1 Form of Offer and Acceptance – Cluster 2

C1: AGREEMENT AND CONTRACT DATA

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

GEOTECHNICAL INVESTIGATION SERVICES

APPOINTMENT OF SERVICE PROVIDERS TO UNDERTAKE GEOTECHNICAL INVESTIGATIONS OF SCHOOLS IN THE KWA-ZULU NATAL PROVINCE

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

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

The offered price for the Geotechnical Investigation Services, inclusive of value added tax (Carried over from C2.2.2), is

R (in figures)

..... Rand (in words)

.....% in Words

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

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

Failure of the Tenderer to sign this form shall invalidate the Tender.

Acceptance

By signing this part of this form of offer and acceptance, The Mvula Trust identified below accepts the tenderer's offer. In consideration thereof, The Mvula Trust 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 Mvula Trust 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

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 Mvula Trust during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall deliver the securities in terms of, Clause 5.4.1 Standard Professional Services Contract (July 2009) third edition, within the period stated in the Contract Data, and after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact The Mvula Trust's agent (whose details are given in the contract data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data, within 21 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any).

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

By the duly authorized representatives signing this agreement, The Mvula Trust 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 Mvula Trust during this process of offer and acceptance.

Signature <i>Of person authorised to sign on behalf of The Mvula Trust</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	The Mvula Trust
Address <i>Physical address</i>	07 Pearce Crescent The Park, Unit F1 Empangeni 3880
Telephone no	(035) 772 2552
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

C1.1 Form of Offer and Acceptance – Cluster 3

C1: AGREEMENT AND CONTRACT DATA

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

GEOTECHNICAL INVESTIGATION SERVICES

APPOINTMENT OF SERVICE PROVIDERS TO UNDERTAKE GEOTECHNICAL INVESTIGATIONS OF SCHOOLS IN THE KWA-ZULU NATAL PROVINCE

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

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

The offered price for the Geotechnical Investigation Services, inclusive of value added tax (Carried over from C2.2.2), is

R (in figures)

..... Rand (in words)

.....% in Words

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

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

Failure of the Tenderer to sign this form shall invalidate the Tender.

Acceptance

By signing this part of this form of offer and acceptance, The Mvula Trust identified below accepts the tenderer's offer. In consideration thereof, The Mvula Trust 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 Mvula Trust 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

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 Mvula Trust during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall deliver the securities in terms of, Clause 5.4.1 Standard Professional Services Contract (July 2009) third edition, within the period stated in the Contract Data, and after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact The Mvula Trust's agent (whose details are given in the contract data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data, within 21 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any).

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

By the duly authorized representatives signing this agreement, The Mvula Trust 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 Mvula Trust during this process of offer and acceptance.

Signature <i>Of person authorised to sign on behalf of The Mvula Trust</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	The Mvula Trust
Address <i>Physical address</i>	07 Pearce Crescent The Park, Unit F1 Empangeni 3880
Telephone no	(035) 772 2552
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

C1.1 Form of Offer and Acceptance – Cluster 4

C1: AGREEMENT AND CONTRACT DATA

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

GEOTECHNICAL INVESTIGATION SERVICES

APPOINTMENT OF SERVICE PROVIDERS TO UNDERTAKE GEOTECHNICAL INVESTIGATIONS OF SCHOOLS IN THE KWA-ZULU NATAL PROVINCE

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

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

The offered price for the Geotechnical Investigation Services, inclusive of value added tax (Carried over from C2.2.2), is

R (in figures)

..... Rand (in words)

.....% in Words

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

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

Failure of the Tenderer to sign this form shall invalidate the Tender.

Acceptance

By signing this part of this form of offer and acceptance, The Mvula Trust identified below accepts the tenderer's offer. In consideration thereof, The Mvula Trust 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 Mvula Trust 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

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 Mvula Trust during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall deliver the securities in terms of, Clause 5.4.1 Standard Professional Services Contract (July 2009) third edition, within the period stated in the Contract Data, and after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact The Mvula Trust's agent (whose details are given in the contract data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data, within 21 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any).

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

By the duly authorized representatives signing this agreement, The Mvula Trust 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 Mvula Trust during this process of offer and acceptance.

Signature <i>Of person authorised to sign on behalf of The Mvula Trust</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	The Mvula Trust
Address <i>Physical address</i>	07 Pearce Crescent The Park, Unit F1 Empangeni 3880
Telephone no	(035) 772 2552
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

C1.1 Form of Offer and Acceptance – Cluster 5

C1: AGREEMENT AND CONTRACT DATA

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

GEOTECHNICAL INVESTIGATION SERVICES

APPOINTMENT OF SERVICE PROVIDERS TO UNDERTAKE GEOTECHNICAL INVESTIGATIONS OF SCHOOLS IN THE KWA-ZULU NATAL PROVINCE

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

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

The offered price for the Geotechnical Investigation Services, inclusive of value added tax (Carried over from C2.2.2), is

R (in figures)

..... Rand (in words)

.....% in Words

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

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

Failure of the Tenderer to sign this form shall invalidate the Tender.

Acceptance

By signing this part of this form of offer and acceptance, The Mvula Trust identified below accepts the tenderer's offer. In consideration thereof, The Mvula Trust 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 Mvula Trust 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

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 Mvula Trust during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall deliver the securities in terms of, Clause 5.4.1 Standard Professional Services Contract (July 2009) third edition, within the period stated in the Contract Data, and after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact The Mvula Trust's agent (whose details are given in the contract data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data, within 21 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any).

Signature <i>Of person authorised to sign the tender</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	
Address <i>Physical address</i>	
Telephone no	
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

By the duly authorized representatives signing this agreement, The Mvula Trust 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 Mvula Trust during this process of offer and acceptance.

Signature <i>Of person authorised to sign on behalf of The Mvula Trust</i>	
Name <i>Of signatory in capitals</i>	
Capacity <i>Of signatory</i>	
Name <i>Of Organisation</i>	The Mvula Trust
Address <i>Physical address</i>	07 Pearce Crescent The Park, Unit F1 Empangeni 3880
Telephone no	(035) 772 2552
Fax number	
Name <i>Of witness</i>	
Signature <i>Of witness</i>	

C1.2 GENERAL CONDITIONS OF CONTRACT AND CONTRACT DATA

The Conditions of Contract are clauses 3 to 15 **STANDARD PROFESSIONAL SERVICES CONTRACT (July 2009) (Third Edition of CIDB document 1014)** as amended with particular conditions specified by the employer.

C1.2.1 GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

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

Contract

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

Contract Data

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

Contract Price

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

Day

A calendar day.

Defect

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

Deliverable

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

Employer

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

Force Majeure

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

Key Persons

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

Others

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

Parties

The Employer and the Service Provider.

Period of Performance

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

Personnel

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

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Data

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

Project

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

Scope of Work

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

Service Provider

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

Start date

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

Subcontractor

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

2. INTERPRETATION

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

3. GENERAL**3.1 Governing law**

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

3.2 Change in legislation

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

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

3.3 Language

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

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

3.4 Notices

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

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

3.5 Location

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

3.6 Publicity and publication

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

3.7 Confidentiality

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

3.8 Variations

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

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

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

3.9 Changes to the Contract Price or Period of Performance

3.9.1 Not applicable

3.9.2 The Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.

3.9.3 Not applicable

3.9.4 Not applicable.

3.10 Sole agreement

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

3.11 Indemnification

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

3.12 Penalty

3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, he may after giving notice to the Service Provider:

- a) terminate the Contract
- b) complete the Services at the Service Provider's cost.

3.13 Equipment and materials furnished by the Employer

3.13.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

3.14 Illegal and impossible requirements

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

3.15 Programme

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

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

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

3.16 Price adjustment to time-based fees for inflation

3.16.1 Fees payable will be capped as fixed cost per school as indicated not escalation or changes will be allowed.

4. EMPLOYER'S OBLIGATIONS

4.1 Information

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

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

4.2 Decisions

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

4.3 Assistance

- 4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:
- a) authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
 - b) provide all relevant data, information, reports, correspondence and the like, which become available;
 - c) procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
 - d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;
- 4.3.2 Unless otherwise communicated, the authorized and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

4.4 Services of Others

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

4.5 Notification of material change or defect

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

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

4.6 Issue of instructions

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

4.7 Payment of Service Provider

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

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

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

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

5.2 Exercise of authority

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

5.3 Designated representative

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

5.4 Insurances to be taken out by the Service Provider

5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

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

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

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

5.6 Co-operation with Others

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

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 2 Days thereof give notice to the Employer.

6. CONFLICTS OF INTEREST

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

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

6.2 Royalties and the like

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

6.3 Independence

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

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

- 7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.
- 7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.
- 7.1.3 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.
- 7.1.4 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

- 7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.
- 7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.
- 7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.
- 7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:
- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
 - b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
 - c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

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

8.2 Completion

- 8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.
- 8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:
- a) failure of the Employer to fulfil his obligations under the Contract;
 - c) any delay in the performance of the Services which is not due to the Service Provider's default;
 - d) *Force Majeure*; or
 - e) suspension.
- 8.2.3 The Service Provider shall within 1 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 2 days after the delay ceases deliver to the Employer full and detailed particulars of the request.
- 8.2.4 The Employer shall, within 2 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or

inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

8.3 Force Majeure

- 8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.
- 8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.
- 8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;
- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within two (2) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- (d) if the Service Provider becomes insolvent or liquidated; or
- (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than two (2) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (2) Days written notice to the Employer after the occurrence of any of the following events:

- (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
- (c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
- (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the

prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

- 8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.5 Suspension

- 8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimize 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.

10. SUCCESSION AND ASSIGNMENT

- 10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.
- 10.2 An assignment shall be valid only if it is a written agreement, by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
- (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
 - (b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.
- 11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.
- 11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.
- 11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. RESOLUTION OF DISPUTES

12.1 Settlement

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

12.2 Mediation

- 12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.
- 12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means

of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorized to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

12.3 Adjudication

12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.

12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.

12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.

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

12.4 Arbitration

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

12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13. LIABILITY

13.1 Liability of the Service Provider

13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data, if any.

.13.2 Liability of the Employer

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

13.3 Compensation

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

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

13.4 Duration of Liability

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

13.5 Limit of Compensation

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

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

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

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

13.6 Indemnity by the Employer

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the

Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

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

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

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

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

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

14.2 If the Employer is satisfied that the invoice complies with the above provision, the Employer shall submit the invoice to the Client¹ for consideration and approval. If the Client approves the invoice, the Client shall make payment to the Employer. The Employer shall make payment of the invoice to the Service Provider within 30 days of receiving payment from the Client. PSP to note that

Notwithstanding, any provision in this Contract or at law, the Employer shall not be liable to or make payment to the Service Provider until the Employer receives payment from the Client. The Employer shall not be liable for any costs and/or losses incurred, including interest, by the Service Provider due to non-payment or delayed payment by the Client.

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

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

15 AMOUNTS DUE TO THE EMPLOYER

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

¹ To be defined as the Department of Basic Education

CONTRACT DATA

The Conditions of Contract are the *Standard Professional Services Contract (July 2009)* published by the Construction Industry Development Board.

Each item of data given below is cross-referenced to the clause in the Conditions of Contract to which it mainly applies.

PART 1	DATA PROVIDED BY THE EMPLOYER
3.4 and 4.3.2	The authorized and designated representative of the Employer is: Name: Mziwoluntu Mazibu Position: Programme Manager (Kwa-Zulu Natal)
1	Scope of work For the provision of geotechnical investigations for the construction of sanitation infrastructure at schools in the Kwa-Zulu Natal Province
1	Period of Performance The Estimated period of performance is twenty one (21) working days commencing from the date of receipt of instruction from the Employer to proceed with the work. The Start Date is upon receipt of instruction from The Mvula Trust
2.4	All monetary amounts to include 15% Value Added Tax (VAT)
3.4.1	Communications by e-mail permitted.
3.5	The location for the performance of the Project is in various districts in the Kwa-Zulu Natal Province.
3.6	The Service Provider may not release public or media statements or publish material related to the Services or Project under any circumstances.
3.12 3.12.1	PENALTY Add paragraph under 3.12.1 A penalty amount as indicated below per day will be applicable per day after Period of Performance, to a maximum equal to 25% of contract amount, after which the contract may be terminated. The following penalties will be applied a) R 500.00 per day for late completion of Services as defined in the scope of work after lapse of period of performance (mulatis mutandis)

3.15.4	The Service Provider shall provide a programme for the completion of the scope of works within two (2) days of given a written instruction to proceed with the works.
4.3.3	Add the following clause If the Service Provider requires access to Site, the Service Provider shall inform the Employer timeously.
4.4	The Service Provider shall ensure that it co-operates with Others, where necessary.
5.4.1	The Service Provider is required to provide Professional Indemnity (PI) Cover as set out in the Professional Indemnity Schedule. The Service Provider is required to provide the following: Insurance against all risk insurance 1. PI Cover is: Maximum of 2 x the Professional Fee, excluding disbursements and VAT
5.4.2	Add the following paragraph The Service Provider is to ensure the updated cover is submitted annually to the Client on each anniversary of the policy
5. 5.8	SERVICE PROVIDER'S OBLIGATIONS Add the following clause COMMUNICATION The service provider shall not commit the Employer to any obligation without the written approval of the Employer. To prevent unnecessary risk, the service provider shall co-ordinate all communication with third parties via the designed representative of the Employer.
5.9	SERVICE PROVIDER'S OBLIGATIONS Add the following clause REPORTS The Service Provider shall be responsible for providing various reports as per scope of work.
5.10 5.10.1	SERVICE PROVIDER'S OBLIGATIONS Add the following clause SITE VISITS The Service Provider shall visit the Site to undertake the field work and no additional costs will be paid for visiting the incorrect school or re-visit to the same school.
5.11 5.11.1 5.11.1.1 5.11.1.2 5.11.2	SERVICE PROVIDER'S OBLIGATIONS Add the following clause PROMPT RESPONSE TO INFORMATION REQUESTS OR CORRECTIONS The Service Provider shall: comply with all reasonable requests by the Employer, for the information and/or documentation; and comply with all reasonable request by the Employer for the Service Provider to correct any

5.11.3	information and/or documentation provided by the Service Provider to the Employer. If the Employer is not satisfied with the sufficiency and/or accuracy of the information and/or documentation provided by the Service Provider, the Employer shall provide the Service Provider with reasons for rejecting the information and/or documentation. The Service Provider shall provide further and/or accurate information and/or documentation which may be requested by the Employer, within 2 days of being notified of the Employer's rejection of the information and/or documentation.
5.11.4	In deciding whether the information and/or documentation is sufficient and/or accurate, the Employer shall exercise its discretion reasonably. If, after the second request for information and/or documentation by the Employer, the information and/or documentation remains insufficient and/or inaccurate, the Service Provider shall be liable for all costs reasonably incurred by the Employer in producing sufficient and/or accurate information and/or documentation.
8.2.1	The Contract is concluded when a complete set of data is provided by Service provider
8.5.3	The Service provider accepts that the Services may be suspended by the Employer upon written notice from the Client. Thereafter the provisions of this contract shall apply.
9.1	Copyright of documents prepared for the Project shall vest with the Service Provider until paid in full by the Employer.
12.1.2	The dispute shall be referred to Arbitration as per clause 12.4
12.2	Not applicable to the Contract.
12.3	Not applicable to the Contract.
13.1.3	All persons within a joint venture or consortium shall carry a minimum professional indemnity insurance of maximum value of the 2 x fee applicable for the respective project, excluding disbursements and VAT. The Service Provider must further ensure the policy is in updated annually and copies supplied to the Client.
13.4	The Service Provider will arrange and maintain professional indemnity insurance cover in respect of the service provided under this agreement for the duration of the liability period in terms of this clause. The Service Provider is to provide the Client with updated schedule within fourteen (14) days after the anniversary of the policy date applicable.
13.5.1	The Service Provider is only entitled to the payment of fees for professional services
13.6	The provisions of 13.6 do not apply to the Contract.
13.7	The provisions of 13.7 do not apply to the Contract.
14.5	REMUNERATION AND REIMBURSEMENTS OF SERVICE PROVIDER
14.5.1	The Service Provider shall issue invoices to the Employer for services rendered by the Service Provider. The invoice shall include:

	• Geotechnical investigation Desktop report (PDF report) • Summary report of preliminary geotechnical investigation results (Excel report) • Geotechnical Investigation report (PDF report) If the above reports are not attached the invoices will returned to service provider
14.6	If the Employer (The Mvula Trust) is satisfied that the invoice complies with the above provision, the Employer shall submit the invoice to the Client (The Department of Basic Education) ² for consideration and approval. If the Client approves the invoice, the Client shall make payment to the Employer. The Employer shall make payment of the invoice to the Service Provider within 30 days of receiving payment from the Client.
14.7	If the Client disputes the invoice, the Employer shall communicate the reasons for rejecting the invoice to the Service Provider as soon as possible. The Service Provider shall ensure that it complies with all reasonable requests of the Employer and Client regarding the contents of the invoice. Thereafter the Employer will re-submit the invoice and additional documents where necessary to the Client for processing and approval. No payment shall be made until the invoice is approved by the Client.
14.8	Notwithstanding, any provision in this Contract or at law, the Employer shall not be liable to or make payment to the Service Provider until the Employer receives payment from the Client. The Employer shall not be liable for any costs and/or losses incurred, including interest, by the Service Provider due to non-payment or delayed payment by the Client.
14.9	The Employer shall use reasonable endeavours to ensure that the Client makes payment as soon as possible upon the submission of the invoice
15.	To be deleted and replaced with: The Employer shall be entitled to set-off all amounts due to the Employer from the Service Provider against all amounts due to the Service provider

C1.2 CONTRACT DATA (Continued)

Part 2: Data provided by the Professional Service Provider

Clause	C3.1 Data
1	The Service Provider is Address Telephone: Fax simile: E-mail:
5.3	The authorised and designated representative of the Service Provider is: Name: The address for receipt of communications is: Telephone: Fax simile: Address

C2.1 Pricing Instructions

C2.1 Pricing Instructions

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

C2.1.2 Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs.

C2.1.3 Set off

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

C2.2.2 Activity Schedule for Fixed based Fees – Cluster 1

Tenderers to provide fixed cost per school. Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs

PRICE SCHEDULE A				
Offered Fees Proposal for Cluster 1 (Inclusive of travelling, accommodation and subsistence and admin costs)				
No.	District(s)	No. of Schools	Fixed Cost per school (R)	Amount (R) (Excl. Vat)
1	Umzinyathi and Amajuba District Municipalities	9		
			Subtotal	
	Total Offer (Excl Vat)			
	Vat @ 15%			
	Total Offer (to be carried forward to Form of Offer) (Incl. Vat)			

C2.2.2 Activity Schedule for Fixed based Fees – Cluster 2

Tenderers to provide fixed cost per school. Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs

PRICE SCHEDULE A				
Offered Fees Proposal for Cluster 2 (Inclusive of travelling, accommodation and subsistence and admin costs)				
No.	District(s)	No. of Schools	Fixed Cost per school (R)	Amount (R) (Excl. Vat)
2	Umkhanyakude and Zululand District Municipalities	8		
			Subtotal	
	Total Offer (Excl Vat)			
	Vat @ 15%			
	Total Offer (to be carried forward to Form of Offer) (Incl. Vat)			

C2.2.2 Activity Schedule for Fixed based Fees – Cluster 3

Tenderers to provide fixed cost per school. Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs

PRICE SCHEDULE A				
Offered Fees Proposal for Cluster 3 (Inclusive of travelling, accommodation and subsistence and admin costs)				
No.	District(s)	No. of Schools	Fixed Cost per school (R)	Amount (R) (Excl. Vat)
3	Ilembe, Umgungundlovu and Uthukela District Municipalities	8		
			Subtotal	
	Total Offer (Excl Vat)			
	Vat @ 15%			
	Total Offer (to be carried forward to Form of Offer) (Incl. Vat)			

C2.2.2 Activity Schedule for Fixed based Fees – Cluster 4

Tenderers to provide fixed cost per school. Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs

PRICE SCHEDULE A				
Offered Fees Proposal for Cluster 4 (Inclusive of travelling, accommodation and subsistence and admin costs)				
No.	District(s)	No. of Schools	Fixed Cost per school (R)	Amount (R) (Excl. Vat)
4	Harry Gwala, UGU and Ethekwini District Municipalities	6		
			Subtotal	
	Total Offer (Excl Vat)			
	Vat @ 15%			
	Total Offer (to be carried forward to Form of Offer) (Incl. Vat)			

C2.2.2 Activity Schedule for Fixed based Fees – Cluster 5

Tenderers to provide fixed cost per school. Professional fees for undertaking geotechnical investigations will be paid on a fixed cost bases per school inclusive of travelling, accommodation and subsistence and admin costs

PRICE SCHEDULE A				
Offered Fees Proposal for Cluster 5 (Inclusive of travelling, accommodation and subsistence and admin costs)				
No.	District(s)	No. of Schools	Fixed Cost per school (R)	Amount (R) (Excl. Vat)
5	King Cetshwayo and Zululand District Municipalities	9		
			Subtotal	
	Total Offer (Excl Vat)			
	Vat @ 15%			
	Total Offer (to be carried forward to Form of Offer) (Incl. Vat)			

C3Scope of Work

C3.1 SCOPE OF WORKS AND METHODOLOGY

The scope of works will entail the following:

1. Geotechnical investigation Desktop report (in PDF format)
 - 1.1 The desktop study will cover the following minimum areas but not limited to
 - a) Introduction
 - b) Investigation methodology and techniques - covering hydrogeological surveys, engineering geology, application of ground water protocol for the area Review of existing geological data to aid site characterization etc
 - c) Results - covering school assessment, ground water protocol and excavatability assessments
 - d) Summary and Recommendation
 -
2. Site visit and test pit siting
 - 2.1 Siting of 3 test pit on the centre of the proposed structures position
 - a) Grade R
 - b) Staff, boys and girls position
 - c) Alternative position
 - 2.2 Test pit excavation and profiling, according to industry standards
 - 2.3 Hand and/ or machine excavation of test pits
 - 2.4 DCP tests at each trial pit
3. Summary report of preliminary geotechnical investigation results (Excel report format)
 - 3.1 The summary report of preliminary cover the following minimum areas but not limited to
 - a) Excavation depth
 - b) Depth of bedrock (Shallow/ Deep)
 - c) Rock type classifications as per SANS standards (soft, intermediate and hard rock)
 - d) Existence of Pedogenic soils
 - e) Level of natural water table
 - f) Presence of ground water seepage
 - g) Perched water table

- h) Excavation classification (0-1.5 m)
- i) Excavation classification (1,5 - 2.5 m)
- j) Founding soils improvement requirements

4. Final Geotechnical Investigation report (PDF report)

4.1 The Investigation will report on the following deliverables:

- a) Sampling and Lab testing of selected soil material for foundation indicator tests, to aid the prediction of heave/collapse/bearing capacity etc.
- b) Lab results analysis
- c) Geotechnical considerations
- d) Rock type classifications as per SANS standards (soft, intermediate and hard rock)
- e) Suitability of the site for the proposed sanitation facilities
- f) Possibility of seasonal perched groundwater conditions
- g) Provided founding solution recommendations for the site
- h) Classification of the sites for the building units as per the National Building Regulation Requirement
- i) Any soil improvements that must be undertaken on site
- j) Fulfil the requirement of the SAICE Geotechnical Division Code of Practice for Site Investigation

Report to be signed by a Professional registered persons and service provider will also be required to complete competent person certificate as part of his submission documents.

C4 Site Information - Cluster 1 List of Schools (09 Schools)

NatEmis	Official_Institution_Name	DMunName	GIS_Lat	GIS_Long	Specialist Cluster
500172938	KHALIMA PRIMARY SCHOOL	Amajuba			PSP 1
500114737	CASSINO PRIMARY SCHOOL	Umzinyathi	28'12'19.1"	30'40'51.2"	
500122063	DLENYANE COMBINED SCHOOL	Umzinyathi	28'39'50.8"	30'24'02.5"	
500166278	INTOYETHU PRIMARY SCHOOL	Umzinyathi	28'10'39.7"	30'37'57.7"	
500304584	KLWANA COMBINED SCHOOL	Umzinyathi	28'24'33.8"	30'52.44"	
500145029	MABASO SECONDARY SCHOOL	Umzinyathi	28'43'28.9"	30'26'35.9"	
500192474	MAGOGO PRIMARY SCHOOL	Umzinyathi	28'27'23.9"	30'48'16.6"	
500323343	NDLELANHLE SECONDARY SCHOOL	Umzinyathi	28'11'54.6"	30'48'26.6"	
500309417	ZICOLE SECONDARY SCHOOL	Umzinyathi	28'10'54.5"	30'37'38.6"	

C4 Site Information - Cluster 2 List of Schools (08 Schools)

NatEmis	Official_Institution_Name	DMunName	GIS_Lat	GIS_Long	Specialist Cluster
500128908	EKUPHINDISENI PRIMARY SCHOOL	Umkhanyakude	28'01'52"	32'02'38.8"	PSP 2
500133459	EMGQOBELWENI PRIMARY SCHOOL	Umkhanyakude	26'58.84"	32'03'19.8"	
500135753	ENDABENI PRIMARY SCHOOL	Umkhanyakude	27'21.09'7"	32'04.14"	
500180523	KWAMANGQWASHU PRIMARY SCHOOL	Umkhanyakude	27'15'43.6"	32'08'51.4"	
500187923	LUBAMBO PRIMARY SCHOOL	Umkhanyakude	27'13,5'1"	32'05'09'2"	
500198098	MANZIBOMVU PRIMARY SCHOOL	Umkhanyakude	27'32,5'9"	32'32.12'1"	
500213675	MNTANENKOSI SECONDARY SCHOOL	Umkhanyakude	27'32'26.2"	32'33'01.8"	
500105709	BANZANA HIGH SCHOOL	Zululand	27'48'13.3"	31'50'47.0"	

C4 Site Information - Cluster 3 List of Schools (08 Schools)

NatEmis	Official_Institution_Name	DMunName	GIS_Lat	GIS_Long	Specialist Cluster
500156251	HLANGABEZA HIGH SCHOOL	Ilembe			PSP 3
500400969	NOPHUNGWA PRIMARY SCHOOL	Ilembe			
500227328	NGANGEZWE HIGH SCHOOL	Umgungundlovu	29'39'26.3"	30'37'00"	
500242757	ODLAMENI PRIMARY SCHOOL	Umgungundlovu	29'31'50,5"	30'39'32"	
500260443	SENZOSABASHA SECONDARY SCHOOL	Umgungundlovu	29'27'40"	30'43'46.9"	
500286010	UBUNYE PRIMARY SCHOOL	Umgungundlovu	29'37'10.8"	29'54'13.7"	
500151219	GOURTON BRIDGE PRIMARY SCHOOL	Uthukela	28'55'33.6"	29'35'32"	
500229992	NHLANHLENI SENIOR PRIMARY SCHOOL	Umgungundlovu	29'34'28.2"	30'11'26.9"	

C4 Site Information - Cluster 4 List of Schools (06 Schools)

NatEmis	Official_Institution_Name	DMunName	GIS_Lat	GIS_Long	Specialist Cluster
500308395	LINGELETHU PRIMARY SCHOOL	Harry Gwala			PSP 4
500163207	INGCUKWINI PRIMARY SCHOOL	Ethekwini	29'40'15.6"	30'49'31.4"	
500203870	MBASELA PRIMARY SCHOOL	Ethekwini			
500221556	MVUTHULUKA SECONDARY SCHOOL	UGU	30'33'13"	30'23'22"	
500293891	VUMELETHU Secondary SCHOOL	Ethekwini	30'06'40.7"	30'39'13.7"	
500130314	EMADUNDUBE PRIMARY SCHOOL	Ethekwini	29'57'01.4"	30'46'23,9"	

C4 Site Information - Cluster 5 List of Schools (10 Schools)

NatEmis	Official_Institution_Name	DMunName	GIS_Lat	GIS_Long	Specialist Cluster
500158360	HOMELEIGH PRIMARY SCHOOL	King Cetshwayo			PSP 5
500191882	MAFUNDA SECONDARY SCHOOL	King Cetshwayo	28'35'53.8	31'11'56.4	
500341251	MAGEMFANE HIGH SCHOOL	King Cetshwayo	28'03'11.5"	31'14'48,5"	
500287416	UMGABHI COMBINED SCHOOL	King Cetshwayo	28'44'24"	31'22'46'8"	
500152773	GWAZINYATHI PRIMARY SCHOOL	Zululand	28'05'21.1"	31'28'36.1"	
500219632	MTHUNZIWOXOLO SECONDARY SCHOOL	Zululand	28'14'39.5"	31'40'07."	
500248196	PHEMBUKUTHULA PRIMARY SCHOOL	Zululand	27'59'11.8"	30'42'19.8"	
500262071	SHIBILIKA HIGH SCHOOL	Zululand	28'04'57.7"	31'19'35.4"	
500492655	SICELIMPHUMELELO PRIMARY SCHOOL	Zululand	27'27'36.4"	30'59'409"	
500280016	THAKAZELA PRIMARY SCHOOL	Zululand	27'40'45.1"	31'03'30.6"	