

**Project no: 19/1/9/1/154 TB(22) : APPOINTMENT OF A CONSTRUCTION PROJECT MANAGEMENT PRACTICE/ ARCHITECTURAL PRACTICE AS A LEAD CONSULTANT FOR THE PROVISION OF FULL MULTI-DISCIPLINARY PROFESSIONAL CONSULTANCY SERVICES IN ARCHITECTURE, CIVIL AND STRUCTURAL ENGINEERING, ELECTRICAL AND MECHANICAL ENGINEERING, QUANTITY SURVEYING AND CONSTRUCTION HEALTH AND SAFETY AGENT FOR SAMORA MACHEL POLICE STATION: WESTERN CAPE PROVINCE**

**SIGNED FOR THE TENDERER/ BIDDER:**

Name of representative	Signature	Date

**WITNESSED BY:**

Name of witness	Signature	Date

This Offer is in respect of: (Please indicate with an "X" in the appropriate block)

The official documents ..... ☐  
 The official alternative ..... ☐  
 Own alternative (only if documentation makes provision therefore). ☐

(N.B.: Separate Offer and Acceptance forms are to be completed for the main and for each alternative offer)

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

**Other Contact Details of the Tenderer are:**

Telephone No. .... Cellular Phone No. ....

Fax No. ....

Postal address .....

Banker ..... Branch.....

Registration No of Tenderer at Department of Labour .....

CIDB Registration Number: .....

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\*Any reference to words "Bid" or "Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".

\*\*Any reference to the words "payment reduction" herein shall be construed to have the same meaning as the word "retention"

For Internal & External Use

Effective date Jan. 2009

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## ACCEPTANCE

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

**The terms of the contract, are contained in:**

### THE CONTRACT

#### Agreements and contract data

Form of offer and acceptance

Contract data

#### Letter of invitation

Conditions and annexures

Deviations from and amendments to the documents as well as any changes to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule

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

Notwithstanding anything contained herein, this agreement comes into effect, if delivered by hand on the day of delivery, or if delivered by courier within two working days after submission by the Employer to the courier services for a door-to-door delivery to the Tenderer/ Bidder, provided that the Employer notifies the Tenderer/ Bidder of the tracking number within 24 hours of such submission. Unless the Tenderer/ Bidder (now Professional Service Provider) within seven working days of the date of such submission notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

### For the Employer:

Name of signatory	Signature	Date

<b>Name of Organisation:</b>	South African Police Service
<b>Address of Organisation:</b>	Supply Chain Management Private Bag X254 Pretoria 0001

### WITNESSED BY:

Name of witness	Signature	Date

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#### Schedule of Deviations

<b>1.1.1. Subject: NONE</b>
<b>Detail:</b>
<b>1.1.2. Subject:</b>
<b>Detail:</b>
<b>1.1.3. Subject:</b>
<b>Detail:</b>
<b>1.1.4. Subject:</b>
<b>Detail:</b>
<b>1.1.5. Subject:</b>
<b>Detail:</b>

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

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

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**CONTRACT DATA**

Project title:	Appointment of Construction Project Management Practice / Architectural Practice as lead Consultant for the provision of full Multi-Disciplinary Professional Consultancy Services in Architecture, Civil & Structural Engineering, Electrical & Mechanical Engineering, Quantity Surveying and Construction Health & Safety Agent – SAMORA MACHEL SAPS: WESTERN CAPE
Project no:	19/1/9/1/154 TB C22

**CONDITIONS OF CONTRACT**

The contract will be based on the CIDB Standard Professional Services Contract issued by the CIDB (July 2009) (Third Edition of CIDB document 1014) – obtainable from [www.cidb.org.za](http://www.cidb.org.za).

**CONTRACT SPECIFIC DATA**

The following contract specific data; amendments; additions; or omissions are applicable to this Contract.

CLAUSE	Contract Specific Data, Amendments, Additions and/or Omissions
1	The Employer is <b>the Government of the Republic of South Africa in its department of South African Police Service</b> . The period of performance is from inception of this contract until the Service Provider has completed all deliverables in accordance with the Scope of Works.
3.4 and 4.3.2	The authorized and designated representative of the Employer is the departmental project manager: <b>T TLOLANE / V NOQOBO</b>  The address for receipt of communications is: Private Bag X 254, Pretoria 0001  Tel No : 012 349 6059 Cell No : 082 301 7805 E-MAIL : Noqobovuyokazi@saps.gov.za  Physical address : <b>SAPS Programme and Project Management, 18 De Havilland Crescent, Persequor Park, Lynnwood 0020</b>  Postal address : <b>Private Bag X254 Pretoria 0001</b>
3.5	The services shall be executed in the Service Provider's own office, on the Project site and the office of the "Employer". No portion of the work may be performed by a person employed by the State. No portion of the work may be sublet to any other person or persons without the prior written approval of the Employer.
3.6 3.7	All information, documents, recommendations, programmes and reports collected or compiled must be regarded as confidential and may not be communicated or made available to any person outside the Employer's service and may not be published either during the currency of this Contract or after termination thereof without the prior written consent of the Employer.
3.11.1	Period of Performance shall be sub dividable in separate target dates according to the programme to be submitted in terms of clause 3.14 hereof. A penalty amount of 0.1% of the contract amount will be applicable per target date,

	after which termination of the contract will be considered.
3.14	<p><b>Programme:</b> A programme for the performance of the Service shall be submitted by the Service Provider, identified as the principal agent, to the departmental project manager, within a period of two (2) weeks following the briefing (handing over) meeting.</p> <p>The programme will be the result of the coordination of all appointed Service Providers' preliminary programmes submitted with their respective tenders and shall be in sufficient detail describing key milestones events and activities linked to the fastest realistic time frames in which the Service can be delivered. Milestones and events are to be listed based on the Terms of Reference described in the various appointed Service Providers' tender documents and presented in bar chart format. No milestones may at the coordination stage be extended beyond the time frames outlined in the preliminary programmes of the various appointed Service Providers without acceptable reasons. The programme thus compiled and presented by the principal agent must be counter-signed by all appointed Service Providers as proof that programme was agreed upon by all during the said coordination action.</p> <p>The Employer retains the right to negotiate such submitted programme with the principal agent in consultation with the appointed Service Providers if required to promote the interest of the project.</p> <p><b>Project Execution Plan (PEP):</b> A PEP for the performance of the Service shall be submitted by the Service Provider, to the departmental project manager within a period of two (2) weeks following the briefing meeting.</p> <p>In the event of the Employer not being satisfied with the submitted PEP, the Parties will negotiate in good faith towards a PEP that will be agreeable to both. Such an agreed-upon PEP will form the basis for the management of the appointment and remuneration purposes. Should circumstance change from the initial briefing, the Service Provider and the Employer will negotiate a revised PEP to satisfy such change(s). Should the Parties fail to reach agreement on the PEP or revised PEP, the matter will be dealt with in terms of clause 12.1.2 of the General Conditions of Contract. Should the mediation process fail, the Contract will be deemed to have been mutually terminated and any reasonable fees accrued at that stage settled by the Employer.</p>
4.1.1	<p><b>Briefing meeting:</b> The departmental project manager shall arrange a briefing meeting, compulsory for all appointed <b>Service Providers</b>, as soon as practicable after the appointment of the professional team, or after the appointment of the core members of the professional team required to commence with the Services if not appointed at the same time, during which meeting the departmental project manager, together with any supporting advisors, will verbally brief the professional team comprehensively regarding the requirements of the project and the scope of works and hand over, to the Service Providers, all documentation relevant to the execution of the Service.</p>
5.4.1	<b>Professional Indemnity:</b>
5.4.2	Refer to paragraph C1.17 of the Terms of Reference document.
5.5	<p><b>Service Provider's actions requiring Employer's prior approval:</b> The Service Provider is required to obtain the Employer's prior approval <b>in writing</b> before taking any of the following actions:</p> <ol style="list-style-type: none"> <li>1. Deviate from the final clause 3.14 programme;</li> <li>2. Deviate from the programme (delayed or earlier);</li> <li>3. Deviate from or change the scope of work;</li> <li>4. Change key personnel on the service.</li> </ol>
8.1	<p><b>Commencement of Services</b> The Professional Service Provider shall, save as may be otherwise provided in the Contract or be legally or physically impossible, commence executing the Works within 14 days calculated from the date the Professional Service Provider is appointed.</p>

8.4

8.5

**Termination and/ or Deferment**

The Department reserves the right to terminate this appointment or temporarily defer the work, or any part thereof, at any stage of completion. The appointment, or any part thereof, shall be considered as having been terminated:

- ☐ if you are specifically so notified by the Department; or
- ☐ where the project is deferred or delayed for a period of longer than two (2) years due to reasons not attributable to yourself; or
- ☐ where the Department defers the project and instructions to resume or reinstate the work are not issued within two (2) years of the deferment instructions; or
- ☐ if instructions, necessary for you to continue with the work after a delay or deferment instruction, are not received from the Department within six(6) months after such instructions were requested by you.

Should the agreement between you and the Department, or any part thereof, be terminated by either of the parties due to reasons not attributable to yourself and notwithstanding the provisions of any published fee scale or regulation promulgated in this regard:

- ☐ you will be remunerated for the appropriate portion of the work completed, calculated in accordance with the agreed fee scale as set out in the Terms of Reference and based on the estimated cost of the project, or applicable part thereof, at the time of execution provided that:

- the estimate shall not exceed any cost limit(s) which you have agreed with the Department; or

- no termination levy or similar percentage levy figure will be paid by the Department as a result of the termination of the appointment, irrespective of any reference thereto in any published fee scale or regulation;

- ☐ you will be paid a surcharge equal to such losses (excluding future profits) and expenses as may have been caused by such termination of the agreement as can be substantiated by you.

After an instruction for the temporary deferment of the work is issued to you, or a delay occurs causing the deferment of the work to the project, an interim payment for the appropriate part of the work completed at that stage may be claimed. This shall be calculated in accordance with the agreed fee scale as set out in the Terms of Reference and based on the estimated cost of the project, or part thereof, at the time of execution provided that the estimate shall not exceed any cost limit(s) which you have agreed to with the Department.

Should the work to the project be reinstated or resumed without significant change:

- ☐ within a period of two (2) years from the date of a deferment, the fee paid in accordance with the preceding paragraph as an interim payment will be regarded as part payment of the final amount due, calculated on the estimated cost of the project or the appropriate part thereof;

- ☐ no fee shall be charged in respect of fluctuation in building costs during the period of deferment in respect of completed work and the balance of the fee due shall be calculated on the cost of the project;

- ☐ and should additional services be required from you following the reinstatement or resumption of the deferred work, remuneration for such additional services may be considered on a *quantum meruit* basis;

- ☐ the remuneration must be agreed in writing by the Department via the Departmental Project Manager before this work is undertaken.

Should it be necessary to remunerate you for a portion of the work, the estimated cost of such relevant part of the project shall be the estimate approved or an acceptable tender price received and accepted by the Department. The Department's decision regarding the value thereof is final and binding. Such estimated value shall exclude any allowances in respect of contingencies, contract price adjustments, plant and equipment.

Should the work, or any part thereof, be damaged or destroyed at any stage prior to the completion of the project due to operations of war, fire, storm, flood or other causes over which you could not reasonably have had control, and the work is reinstated, the Department shall pay you an additional fee to be negotiated at such time in accordance with the nature and scope of the professional services required.

8.4.3(c)	The period of suspension under clause 8.5 is not to exceed two (2) years.
9	<p>The Employer will become the owner of the information, documents, advice, recommendation and reports collected, furnished and/or compiled by the Professional Service Provider during the course of, and for the purposes of executing this Contract, all of which will be handed over to the Employer on request, but in any event on the termination and/or cancellation of this Contract for whatever reason. The Professional Service Provider relinquishes its retention or any other rights to which it may be entitled.</p> <p>The copyright of all documents, recommendations and reports compiled by the Professional Service Provider during the course of and for the purposes of finalising the Works will vest in the Employer, and may not be reproduced or distributed or made available to any person outside the Employer's service, or to any institution in any way, without the prior written consent of the Employer. The Employer shall have the right to use such material for any other purpose without the approval of, information or payment to the Professional Service Provider.</p> <p>The copyright of all electronic aids, software programmes etc. prepared or developed in terms of the Contract shall vest in the Employer, who shall have the right to use such material for any other purpose without the approval of, information or payment to the Professional Service Provider.</p> <p>In case of the Professional Service Provider providing documents, electronic aids, software programmes or like material to the Employer, the development of which has not been at the expense of the Employer, copyright shall not vest in the Employer. The Professional Service Provider shall be required to indicate to which documents, electronic aids, software programmes or like material this provision applies.</p> <p>The Professional Service Provider hereby indemnifies the Employer against any action, claim, damages or legal cost that may be instituted against the Employer on the grounds of an alleged infringement of any copyright or any other intellectual property right in connection with the Works outlined in this Contract.</p>
12.1.2	Interim settlement of disputes is to be by mediation.
12.2.1	In the event that the parties fail to agree on a mediator, the mediator is to be nominated by the president of the Association of Arbitrators (Southern Africa).
12.2.4 / 12.3.4	Final settlement is by litigation.

13.	<p><b>Liability</b></p> <p>In the case of your firm being a <b>sole proprietor</b>, the principal of the firm, with the acceptance of this bid, in his/her personal capacity, (i) accepts full liability for the due fulfilment of all obligations in respect of the above mentioned appointment; and (ii) hereby indemnifies the Department, and undertakes to keep the Department indemnified, for a period of ten (10) years beyond the issuing of the Final Approval Certificate/ Final Delivery Certificate (whichever is applicable), in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the firm's intentional and/or negligent acts, errors and/or omissions in its performance on this appointment.</p> <p>In the case of your firm being a <b>partnership</b> consisting of only natural persons, the partners of the firm, with the acceptance of this bid, jointly and severally, in their personal capacity, (i) accept full liability for the due fulfilment of all obligations in respect of the abovementioned appointment; and (ii) hereby indemnify the Department, and undertakes to keep the Department indemnified, for a period of ten (10) years beyond the issuing of the Final Approval Certificate/ Final Delivery Certificate (whichever is applicable), in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the firm's intentional and/or negligent acts, errors and/or omissions in its performance on this appointment. The principals of the firm, with the acceptance of this bid, also renounce the benefit of the <i>exceptionis non causa debiti, non numeratae pecuniae</i> and <i>excussionis</i> or any other exceptions which may be legally raised against the enforceability of this indemnification.</p> <p>In the event of your firm being a company, close corporation or any other enterprise with limited liability (including partnerships consisting of other than only natural persons), you must indemnify the Department as described in the Terms of Reference. The requirement that firms with limited liability hold Professional Indemnity Insurance (clause 5.4.1) is not intended to limit such firm's liability to the value of the Professional Indemnity Insurance held.</p>
13.1.3	All partners in a joint venture or consortium shall carry the same professional indemnity insurance.
13.4	Neither the Employer nor the Service Provider is liable for any loss or damage resulting from any occurrence unless a claim is formally made within 10 years from the date of termination or completion of the Contract.
13.5	The amount of compensation is unlimited.
13.6	The provisions of 13.6 do not apply to the Contract.
15.	In respect of any amount owed by the Service Provider to the Employer, the Service Provider shall pay the Employer interest at the rate as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No 1 of 1999).



**PROJECT: Valet Operator Relocation Project**

**Consultant's Name**

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**STANDARD PROFESSIONAL SERVICES  
CONTRACT**

**(July 2009)  
(Third Edition of CIDB document 1014)**

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Pretoria  
Tel: 012 343 7136 or 012 481 9030  
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## **PREFACE**

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

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

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# GENERAL CONDITIONS OF CONTRACT

## 1. DEFINITIONS

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

### **Contract**

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

### **Contract Data**

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

### **Contract Price**

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

### **Day**

A calendar day.

### **Defect**

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

### **Deliverable**

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

### **Employer**

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

### **Force Majeure**

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

### **Key Persons**

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

### **Others**

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

### **Parties**

The Employer and the Service Provider.

### **Period of Performance**

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

**Personnel**

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

**Personnel Schedule**

A schedule naming all Personnel and Key Persons.

**Pricing Data**

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

**Project**

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

**Scope of Work**

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

**Service Provider**

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service 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 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:~~

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

~~3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.~~

~~3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.~~

~~3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.~~

### 3.10 Sole agreement

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

### 3.11 Indemnification

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

### 3.12 Penalty

~~3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for total damages sustained 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 total damages amount referred to in 3.12.1, he may after giving notice to the Service Provider:~~

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



### **3.13 Equipment and materials furnished by the Employer**

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

### **3.14 Illegal and impossible requirements**

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

### **3.15 Programme**

- 3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:
- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
  - b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
  - c) provisions for float;
  - d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
  - e) other information as required in terms of the Scope of Work or Contract Data.
- 3.15.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.
- 3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.
- 3.15.3 The Service Provider shall update the programme:
- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
  - b) whenever a change in Period of Performance or Contract Price is applied for; and
  - c) whenever a change in the Period of Performance is changed by the Employer

and submit such revised programme to the Employer for approval.

### ~~**3.16 Price adjustment to time-based fees for inflation**~~

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

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

$$\frac{(CPI_n - CPI_s)}{CPI_s}$$

where  $CPI_s$  = ~~the indices specified in the Contract Data during the month in which the start date falls~~

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

#### **4. EMPLOYER'S OBLIGATIONS**

##### **4.1 Information**

- 4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.
- 4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

##### **4.2 Decisions**

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

##### **4.3 Assistance**

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

##### **4.4 Services of Others**

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

##### **4.5 Notification of material change or defect**

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

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

#### **4.6 Issue of instructions**

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

#### **4.7 Payment of Service Provider**

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

### **5. SERVICE PROVIDER'S OBLIGATIONS**

#### **5.1 General**

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

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

#### **5.2 Exercise of authority**

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

#### **5.3 Designated representative**

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

#### **5.4 Insurances to be taken out by the Service Provider**

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

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

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

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

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

## **5.6 Co-operation with Others**

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

## **5.7 Notice of change by Service Provider**

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

## **6. CONFLICTS OF INTEREST**

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

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

### **6.2 Royalties and the like**

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

### **6.3 Independence**

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

## **7. SERVICE PROVIDER'S PERSONNEL**

### **7.1 General**

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

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

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

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

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

## **7.2 Provision of Personnel in terms of a Personnel Schedule**

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

## **8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION**

### **8.1 Commencement of Services**

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

### **8.2 Completion**

- 8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.
- 8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:
- a) additional Services ordered by the Employer;
  - b) failure of the Employer to fulfil his obligations under the Contract;
  - c) any delay in the performance of the Services which is not due to the Service Provider's default;
  - d) *Force Majeure*; or
  - e) suspension.
- 8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.
- 8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or

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

### **8.3 Force Majeure**

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

### **8.4 Termination**

- 8.4.1 The Employer may terminate the Contract:
- (a) where the Services are no longer required;
  - (b) where the funding for the Services is no longer available;
  - (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
  - (d) if the Service Provider becomes insolvent or liquidated; or
  - (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;
- 8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).
- 8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:
- (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
  - (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
  - (c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
  - (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.
- 8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed

prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

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

## **8.5 Suspension**

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

## **8.6 Rights and liabilities of the Parties**

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

## **9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT**

- 9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.
- 9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.
- 9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

## **10. SUCCESSION AND ASSIGNMENT**

- 10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.
- 10.2 An assignment shall be valid only if it is a written agreement, by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases; :

- (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
  - (b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.
- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

## **11. SUBCONTRACTING**

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be 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 authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.
- 12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

## **~~12.3 Adjudication~~**

- ~~12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedure.~~
- ~~12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.~~
- ~~12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.~~
- ~~12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.~~

## **12.4 Arbitration**

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

### **13. LIABILITY**

#### **13.1 Liability of the Service Provider**

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

#### **13.2 Liability of the Employer**

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

#### **13.3 Compensation**

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

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

#### **13.4 Duration of Liability**

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

#### **13.5 Limit of Compensation**

- 13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:
- a) the sum insured in terms of 5.4 in respect of insurable events; and
  - b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.
- 13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.
- 13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a

result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

### **13.6 Indemnity by the Employer**

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

### **13.7 Exceptions**

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

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

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

## **14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER**

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

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

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

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

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

## **15 AMOUNTS DUE TO THE EMPLOYER**

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

[illegible]

## 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

Clause	Issue										
	The Employer is the <b>Airports Company South Africa, Cape Town International Airport</b>										
3.4 and 4.3.2	<p>The authorised and designated representative of the Employer is:</p> <p><b>Name:</b> .....</p> <p>The address for receipt of communications is;</p> <ul style="list-style-type: none"> <li>South Office Block 2<sup>nd</sup> Floor, Projects Department Cape Town International Airport 7524</li> </ul> <p>Telephone: .....</p> <p>Faxsimile: .....</p> <p>Email: .....</p> <p>The Key Persons and their jobs / functions in relation to the services are:</p> <table border="1"> <thead> <tr> <th>Name</th><th>Specific duties</th></tr> </thead> <tbody> <tr> <td></td><td></td></tr> <tr> <td></td><td>Direct Contact / Project Lead</td></tr> <tr> <td></td><td>Client Project Oversight</td></tr> <tr> <td></td><td></td></tr> </tbody> </table>	Name	Specific duties				Direct Contact / Project Lead		Client Project Oversight		
Name	Specific duties										
	Direct Contact / Project Lead										
	Client Project Oversight										
1	The Project is <b>the Valet Operator Relocation Project, Cape Town International Airport</b>										
1.1	The Start Date is.....										
3.5	The location of the Project is Parkade 1 and Parkade 2, CTIA										
3.15.1	The programme shall be submitted within <b>10 Days</b> of the award of the Contract										
3.15.2	The Service Provider shall update the programme at intervals not exceeding <b>4 weeks</b> .										
4.3.1(d)	The Service Provider is required to assist in the obtaining of approvals, licenses and permits from the state, regional and municipal authorities having jurisdiction over the Project										
July 2009: Edition 3 of CIDB document 1015      -18-      Standard Professional Services Contract											

5.4.1	<p>The Service Provider is required to provide professional indemnity cover as set out in <b>Annexure E (Principal Controlled Professional Indemnity and Public Liability Insurance)</b></p> <p>The Service Provider is required to provide the following insurances:</p> <ul style="list-style-type: none"> <li>• Public Liability</li> <li>• Proof of Registration with the Compensation for Occupational Injury Diseases Fund</li> <li>• Insurances not covered by the Client Principal Controlled Insurance Policy</li> </ul>
7.2	The Service Provider is required to provide personnel in accordance with the provisions of clause 7.2 and to complete the Personnel Schedule
8.1	The Service Provider is to commence the performance of the Services within 1 Day of date that the Contract becomes effective
8.4.3(c)	The period of suspension under clause 8.5 is not to exceed 6 months
9.1	Copyright of documents prepared for the Project shall be vested with the <b>Employer</b>
12.1	Interim settlement of disputes is to be by <b>Mediation</b>
12.2 / 12.3	Final settlement is by <b>Arbitration</b>
12.2.1	In the event that the parties fail to agree on a mediator, the mediator is nominated by <b>the SA Association of Arbitrators</b>
12.4.1	In the event that the parties fail to agree on an arbitrator, the arbitrator is nominated by <b>the SA Association of Arbitrators</b>
13.1.3	All persons in a joint venture or consortium shall carry a minimum professional indemnity insurance in line with <b>Section 6 of RFP (Professional Indemnity and Public Liability Insurance)</b>
13.6	The provisions of 13.6 do not apply to the Contract.
14.4	As Amended – Time Charges omitted
15	The interest rates will be Prime Rate plus 2 percent.
	<p>The additional conditions of contract are:</p> <p>Nil</p>

## Part 2: Data provided by the Service Provider

Clause	Issue												
1	The Service provider is: Name: .....												
5.3	The authorised and designated representative of the Service Provider is:  Name: .....  Telephone: .....  Faxsimile: .....  Address: <ul style="list-style-type: none"> <li>• .....</li> <li>• .....</li> <li>• .....</li> <li>• .....</li> </ul>												
7.1.2	The Key Persons and their jobs / functions in relation to the services are: <table border="1" style="width: 100%;"> <thead> <tr> <th>Name</th><th>Specific duties</th></tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Name	Specific duties										
Name	Specific duties												



## Form of offer and acceptance

### Offer

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

..... **Services**

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 an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

**The offered total of the Prices inclusive of Value Added Tax is**

..... Rand

**R** ..... incl VAT

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(s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

for the

tenderer

\_\_\_\_\_  
(Name and address of organization)  
Name and  
signature of

witness \_\_\_\_\_ Date \_\_\_\_\_

## Acceptance

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

The terms of the contract, are contained in:

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

Appendix T.2 - The South African Council for the Project and Construction Management Professions (Act No. 48 of 2000) as per the Board Notice 132 of 2011, Government Gazette, 12 August 2011

Appendix T.3 – Professional Fee Payment Schedule

Appendix T.4 – Disbursement Schedule

Appendix T.5 – Special Requirements at an Operational Airport

Appendix T.6 – ACSA Drawing Standards

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

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Employer's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data. Failure to fulfill 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). Unless the tenderer (now Service Provider) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Signature(s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

Name and signature of witness

Date \_\_\_\_\_

For the Employer

Signature(s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

Name and signature of witness

\_\_\_\_\_

Date \_\_\_\_\_

## Schedule of Deviations

Clause 3.8.2	Omitted
Clause 3.9	Omitted
Clause 3.12.1	Omitted
Clause 3.12.2	Omitted
Clause 3.16	Omitted
Clause 12.3	Omitted
Clause 14.1	Omitted
Clause 14.4	Amended

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

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

**PART C:**  
**CONTRACT**

**Part C 2**

**Terms of Reference:**

**BID 19/1/9/1/154 TB(22)**

**APPOINTMENT OF A CONSTRUCTION PROJECT MANAGEMENT  
PRACTICE/ ARCHITECTURAL PRACTICE AS A LEAD CONSULTANT  
FOR THE PROVISION OF FULL MULTI-DISCIPLINARY PROFESSIONAL  
CONSULTANCY SERVICES IN ARCHITECTURE, CIVIL AND  
STRUCTURAL ENGINEERING, ELECTRICAL AND MECHANICAL  
ENGINEERING, QUANTITY SURVEYING AND CONSTRUCTION HEALTH  
AND SAFETY AGENT: CAPITAL WORKS PROJECT FOR SAMORA  
MACHEL POLICE STATION: WESTERN CAPE PROVINCE**

**NAME of BIDDER:** \_\_\_\_\_

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

ANNEXURE A

2023-03-01 Rev 5

WESTERN CAPE PROVINCE: NEW POLICE STATION AT SAMORA MACHEL CODE \_\_\_\_\_)

**TERMS OF REFERENCE FOR THE APPOINTMENT OF**  
(Mark box with X where applicable)

☐ CONSTRUCTION PROJECT MANAGEMENT PRACTICE/ MULTIDISCIPLINARY PRACTICE

OR

☐ ARCHITECTURAL PRACTICE/ MULTIDISCIPLINARY PRACTICE

**AS A LEAD CONSULTANT FOR THE PROVISION OF FULL MULTI-DISCIPLINARY PROFESSIONAL CONSULTANCY SERVICES IN CONSTRUCTION PROJECT MANAGEMENT; ARCHITECTURE; CIVIL ENGINEERING; STRUCTURAL ENGINEERING; ELECTRICAL ENGINEERING; MECHANICAL ENGINEERING; QUANTITY SURVEYING AND CONSTRUCTION HEALTH AND SAFETY AGENT.**

#### **A1. GENERAL CONDITIONS AND INFORMATION**

##### **A1.1 EXTENT OF AGREEMENT**

The following documents shall constitute the essentialia terms and conditions of the agreement between Lead Consultant and SAPS as "the Client":

- The letter of invitation
- Annexures to the letter of invitation
- Terms of reference;
- Your offer accompanied by the completed schedule of disbursements C1.22 and Activity Schedule D3. The conditions applicable to this terms of reference are the Standard Professional Services Contract (July 2009 Edition) published by the Construction Industry Development Board (CIDB).
- Sub-consulting Agreement for all disciplines (Service provider to provide their own agreements)
- Professional Indemnity for the practice and/ disciplines.

##### **A1.2 DEFINITIONS AND ABBREVIATIONS**

**"Agreement"** means this document and the annexures listed in the schedule which together form the agreement between the Client and the Lead consultant.

**"Architect"** means a person registered in terms of the Architectural Profession Act, Act No. 44 of 2000, under a specific category of registration, or the architectural professional's practice constituted as a legal persona appointed to provide the architectural service for the project.

**"Board Notice"** refers to the professional fees guidelines published by various built environment statutory professional bodies in the government gazette, at the end of a calendar year, to be applicable to the following calendar year.

**"Budget"** means the anticipated cost of the project and/or works, provided that estimates on which the budget is based shall be deemed to be valid.

**"Building contract,"** means the JBCC 'Principal Building Agreement' (PBA) or such other building agreement entered into between the client and the contractor.

**"Built Environment"** refers to the functional area in which registered persons practice. The built environment includes all structures that are planned and /or erected above or underground, as well as the land utilized for the purpose and supporting infrastructure.

**"Client"** means the party appointing the Lead Consultant to perform the services or any part thereof referred to in this document.

**"Client Representative"** means the client designated representative mandated to act on behalf of the client and who shall be available at all reasonable times.

**"Civil Engineer"** means a Professional Engineer registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000).

**"The Council"** means the Council for the Built Environment established under section 2 of the Council for the Built Environment Act, 2000 (Act No 43 of 2000)

**"Construction Health and Safety Agent"** means any competent person who acts as a representative for the client in managing health and safety on a construction project for the client and who has satisfied the registration criteria of the SACPCMP in terms of Section 18 (1) (c) of the Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000).

**"Construction Management"** is the management of the physical construction process within the Built Environment and includes the co-ordination, administration, and management of resources. The Construction Manager is the one point of responsibility in this regard.

**"Construction Project Management"** is the management of projects within the Built Environment from conception to completion, including management of related professional services. The Construction Project Manager is the one point of responsibility in this regard

**"Construction Project Manager"** means a Professional Construction Project Manager registered in terms of the Project and Construction Profession Act, 2000 (Act No. 48 of 2000).

**"Construction monitoring,"** means the process of administering the construction contract and over-seeing and/or inspecting the works, to the extent of the professional consultant's engagement, for the purpose of verification that the works are being completed in accordance with the requirements of the contract that the designs are being correctly interpreted and that appropriate construction techniques are being utilized.

**"Construction Programme"** is the programme for the works indicating the logic sequence and duration of all activities to be completed by the contractors, subcontractors, and suppliers, in appropriate detail, for the monitoring of progress of the works.

**"Consultant"** means a professional person/s or entity/entities appointed by the client to provide services in respect to the project.

**"Contract programme"** is the construction programme for the works agreed between the contractor and the Principal Agent.

**"Contractor"** means the entity or entities entering into the building contract for the execution of the works or part thereof.

**"Contingency fund / Budget reserve"** Budget within the cost baseline or performance measurement baseline that is allocated for identified risks that are accepted and for which contingent or mitigating responses are developed.

**"Documentation programme"** is schedule prepared by the Principal Consultant and agreed to by other consultants indicating the timeous provision of all necessary design documentation required by the contractors and subcontractors for the construction of the works.

**"Electrical Engineer"** means a Professional Engineer registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000).

**"Fees and/or tariff of fees"** means payment made to a consultant in exchange for advice or services.

**"Landscape Architect"** means a professional landscape architect registered in terms of the Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000).

**"Lead Consultant"** means an Architectural practice or Construction Project management Practice that is professionally registered that enters into a contract with the client to provide full multidisciplinary professional services prescribed by the client.

**"Mechanical Engineer"** means a Professional Engineer registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000).

**"Multi-disciplinary Professional Practice"** means a practice that provides two or more of the core disciplinary professional services (Construction Project Manager, Architectural, Quantity Surveying, Civil & Structural Engineering, Electrical Engineering, Mechanical Engineering, Construction Health & Safety), of which each professional division/section in the practice is under the full time supervision of a registered professional in that specific profession and, and which is owned and controlled by registered professionals, by at least a percentage determined by the relevant Council in its Code of Professional Conduct.

**"Principal"** means the proprietor, partner, director or member who bears the risks of the practice and takes full responsibility for the potential liabilities of the practice.