SANRAL
SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD

BUILDING SOUTH AFRICA
THROUGH BETTER ROADS

THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

CONTRACT SANRAL S.002-003-2018/1

FOR COMMUNITY AND SMALL CONTRACTOR TRAINING AND DEVELOPMENT ON MADIDI SERVICE ROADS

PROJECT DOCUMENT

BASE DATE: SEPTEMBER 2026

TENDER DOCUMENT
VOLUME 3
BOOK 2 OF 3

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

NAME OF TENDERER:
……

Set sequential number

THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

CONTRACT SANRAL S.002-003-2018/1

FOR COMMUNITY AND SMALL CONTRACTOR TRAINING AND DEVELOPMENT ON MADIDI SERVICE ROADS

THIS DOCUMENT COMPILED UNDER THE DIRECTION OF:

The Provincial Head (North West Province)
The South African National Roads Agency SOC Ltd
38 Ida St,
Menlo Park,
Pretoria,
0081
Tel: 012 426 6200

LIST OF CONTRACT DOCUMENTS

The following documents form part of this contract:

VOLUME 1: The Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (1999), published by the Federation Internationale des Ingenieurs-Conseils (FIDIC) which the Tenderer shall purchase himself. (See note 1 below.)

VOLUME 2: The COTO Standard Specifications for Road and Bridge Works for South African Road Authorities (Draft Standard October 2020 edition), issued by the Committee of Transport Officials which the Tenderer shall obtain himself. (See Note 2 below.)

VOLUME 3: The Project Document, containing the tender notice, Conditions of Tender, Tender Data, Returnable Schedules, General and Particular Conditions of Contract, Project Specifications, Pricing Schedule, Form of Offer and Project Information is issued by the Employer. (See Note 3 below.) The Employer's Form of Acceptance and any correspondence from the selected Tenderer, performance security-demand guarantee, and all addenda issued during the period of tender will also form part of this volume once a successful Tenderer has been appointed.

The Conditions of Tender are the Standard Conditions of Tender as contained in Annexure C of the STANDARD FOR UNIFORMITY IN ENGINEERING AND CONSTRUCTION WORKS CONTRACTS, AUGUST 2019: Standard Conditions of Tender, document, which the Tenderer may download from the CIDB website.

https://www.cidb.org.za/download/100/procurement-documents-templates-and-guidelines/6157/cidb-standard-for-uniformity-august-2019.pdf

VOLUME 4: The Road Works Drawings

Notes to Tenderers:

1. VOLUME 1

This Volume is obtainable from:

CESA
P. O. Box 68482, Bryanston, 2021
Tel: (011) 463 2022
Fax: (011) 463 7383
E-mail: general@cesa.co.za

2. VOLUME 2

This Volume is obtainable from SANRAL and can be downloaded free of charge from the SANRAL's website www.nra.co.za.

3. VOLUME 3

This Volume is issued at tender stage in electronic format and can be downloaded from the SANRAL's website.

The website contains the following files:

a) The full Project Document in pdf format (excluding the Standard Conditions of Tender).
b) The Returnable Forms in MS Word format.
c) The Pricing Data in MS Excel format.

The Standard Conditions of Tender may be downloaded from the CIDB website by means of the following link:

https://www.cidb.org.za/download/100/procurement-documents-templates-and-guidelines/6157/cidb-standard-for-uniformity-august-2019.pdf

At contract stage, VOLUME 3 will be a bound signed paper copy containing the following documents:

a) Returnable schedules relevant to the project.
b) Agreements and Contract Data.
c) Pricing Data.
d) Scope of Work.
e) Project Information.

4. Submission of Tender

Of the contract documents, only the following parts of VOLUME 3 needs to be submitted in (1) a printed and bound hard copy and (2) electronically on a flash drive marked "Main Tender", followed by the Tenderer's name, in a sealed envelope, in the following order:

a) Form of Offer (signed in hard copy and scanned as .pdf)
b) Returnable Schedules, attachments and certificates (hard copy and scanned as .pdf)
c) Pricing Schedule (completed in hard copy, scanned as .pdf and MS Excel copy).

5. Alternative Offers

For alternative offers the Tenderer shall submit the following additional documentation, in (1) a printed and bound hard copy and (2) electronically on a separate flash drive marked "Alternative", followed by the Tenderer name, in a sealed envelope in the following order:

a) Form of Offer (signed in hard copy and scanned as .pdf and state "Alternative Form of Offer")
b) Returnable Schedules, attachments and certificates (hard copy and scanned as .pdf)
c) Alternative Pricing Schedule (completed in hard copy, scanned as .pdf and MS Excel copy).

Information provided by a Tenderer over and above the above parts of Volume 3 shall be treated as information only and will only be bound into the Contract if the Tenderer notes on Form A4: Schedule of Variations or Deviations, that the information has a bearing on the tender price.

Sensitivity - General

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Sensitivity - General

PART C1: AGREEMENTS AND CONTRACT DATA

Sensitivity - General

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C1.1 FORMS OF OFFER AND ACCEPTANCE

C1.1.1 FORM OF OFFER (INCORPORATING SBD7)

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

Sir/Madam,

CONTRACT SANRAL S.002-003-2018/1 FOR COMMUNITY AND SMALL CONTRACTOR TRAINING AND DEVELOPMENT ON MADIDI SERVICE ROADS

1. I/we, by signing this part of the forms of offer and acceptance acknowledge they are the equivalent of the Letters of Tender and Acceptance as defined in Clauses 1.1.1.3 and 1.1.1.4 in the "Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer" (1999), published by the Fédération Internationale des Ingénieurs-Conseils, (FIDIC).

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

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

4. PRICE OFFERED

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

.....

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

R ..... ***(in figures)***

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

5. PREFERENCE CLAIMED

I I/we claim; a B-BBEE contributor status level ..... (as per Returnable Schedule Form C1.2: Preference Points Claim Form in terms of the Preferential Procurement Regulations 2022 (incorporating SBD6.1), a Percentage black ownership …… (as per Returnable Schedule Form C1.3), and "B-BBEE size …… (EME, QSE or Generic)". In the event of any difference between the above stated B-BBEE contributor status level and the B-BBEE Verification Certificate attached to Form C1,1, the B-BBEE Verification Certificate shall apply. In the event of any difference between the above stated Percentage black ownership and the Share certificate information, the Share certificate shall apply.

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

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

Yours faithfully

SIGNATURE: ..... DATE: ……..

NAME (IN CAPITALS): ……..

CAPACITY: …….

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

Certificate of Authority for signature ;;;

C1.1.2 FORM OF ACCEPTANCE (INCORPORATING SBD7)

Form to be printed on SANRAL letterhead.

To …… *(Name of successful Tenderer.)*

Dear Sir,

CONTRACT SANRAL S.002-003-2018/1 FOR COMMUNITY AND SMALL CONTRACTOR TRAINING AND DEVELOPMENT ON MADIDI SERVICE ROADS

ACCEPTANCE OF OFFER

1. It is our pleasure to inform you that the South African National Roads Agency SOC Ltd (the Employer) accepts your ***select if applicable corrected/corrected alternative/alternative*** offer in the amount of R …… *(insert contract amount)* (i.e. including VAT, but excluding CPA and any contingent sum not in the priced schedule) for a contract period of ..... *(insert duration)* months and with a Base Date of ..... *(insert 28 days prior to the closing date of tender).*

2. The amount due may not be the accepted price but payment shall be made in accordance with the conditions of contract identified in the Contract Data.

3. This Form of Acceptance is the equivalent of the Letter of Acceptance as defined in Clause 1.1.1.3 of the "Conditions of Contract for Construction for Building and Engineering Works designed by the Employer" (1999), published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC).

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

   a) Part C1: Agreements and Contract Data (including this form of acceptance),
   b) Part C2: Pricing Data,
   c) Part C3: Scope of Work,
   d) Part C4: Site Information, and
   e) Part C5: Annexure
   f) together with issued drawings and other documents, or parts thereof, which may be incorporated by reference into Parts C1 to C5 listed above.

5. Deviations and/or qualifications included in your offer as well as any changes to the terms of the offer agreed by us during the process of offer and acceptance shall not be valid unless contained in the appended schedule of deviations. In the event that an alternative offer is accepted, it is a fundamental condition of acceptance that all responsibilities and concomitant liabilities arising from the alternative design pass from us to you. *(If no deviation/alternative tender then replace the above part of this paragraph with "There are no alternatives, deviations, qualifications or changes to the documents").* Addenda issued during the tender period are deemed not to be deviations to the tender documents and schedules.

6. Notwithstanding the need to agree the mandate required by Section 37 of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), a proforma of which is attached for your reference, we hereby appoint you as the principal contractor in terms of Regulation 5(1)(k) of the Construction Regulations, GNR. 84 of 2014.

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

8. At least 7 working days prior to Commencement Date you shall deliver to us:

Pro forma

i) Performance Security (per clause 4 of the FIDIC Conditions of Contract) a proforma of which is attached for your reference. The 10% calculation shall be based on the accepted contract value as contained in this form and there shall be no deviations from the wording of the proforma guarantee.
ii) Proof of insurance in terms of the information provided in the Contract Data and clause 18 of the FIDIC Conditions of Contract. Proof of validity of insured cover shall be provided on monthly basis until contract completion.
iii) Fully completed and signed Form C1.1.4.3 together with your Health and Safety Plan and proof of the Construction Health and Safety Officer's registration with SACPCMP.
iv) Proof that you are registered and in good standing with the compensation fund or with a licensed compensation insurer.
v) A completed Form of Banking Details. *(To be included if the successful tenderer has not previously been registered as a vendor with the Employer.)*
vi) Proof of registration on the Employer's Project Information Module (ITIS).
vii) Proof of notification to the Chief Inspector of Mines, of appointments as per Form C1.1.4.7 and C1.1.4.8.
viii) Nomination DAB member details.
ix) Fully completed Form C1.1.3 Appendix to Form of Acceptance

Failure to fulfill the obligations (i), (ii) or (iii) above shall constitute a repudiation of this agreement and we may at our discretion apply any rights of remedy including barring you from tendering on any of our future tenders for a period to be determined by us, but not less than twelve (12) months, from the date of tender closure.

9. The effective date of the contract shall be the date of this Form of Acceptance unless you, within four (4) calendar days of the effective date, notify us in writing of any justification why you cannot accept the contents of this agreement.

10. The Commencement Date of the Works shall be the day on which the commencement meeting is held, which shall not be later than …….. *(The commencement meeting date indicated above to be within 28 calendar days after the date of this form, as circumstances demand and as agreed between tenderer and Employer. The above can also be amended by fixing the Commencement Date to a given date).* Access to the Site shall be (***T****he following wording to be added for contracts where an application for a permit to do construction work is required from Department of Labour i.t.o. Construction Regulation 3(2))* on the date stated on the Letter of Access to the Site, which date shall not be prior to the Employer being in possession of the Construction Work Permit and not prior to the Contractor's CPG Plan being accepted.
The following wording is to be added for contracts where no application for a permit to do construction work is required from the Department of Labour i.t.o. Construction Regulation 3(2),:
on the date stated on the Letter of Access to the Site, which date shall not be prior to the Contractor's CPG Plan being accepted

11. Access to the Site shall be on the date stated on the Letter of Access to the Site, which date shall be after the Employer being in possession of the Construction Work Permit and after the requirements of the Mobilisation Period have been complied with.

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

13. Messrs …….. *(insert name of Consulting Engineering firm)* act as our agent to fulfil the functions of the Engineer in the administration of this contract. Please contact …….. *(insert Engineer's name)* at …… *(insert Engineer's contact details)* to arrange for the signing of the contract documents and hand-over of the site.

14. The tenderer must register an account on SAP Ariba before the hand-over meeting. The link and information to register the Ariba account is provided below.

Proforma

https://www.nra.co.za/sap-ariba/

Contact: supplierenablement@nra.co.za or ProcurementNR1@sanral.co.za for queries regarding SAP Ariba registration

SIGNATURE: ……

DATE: ……

NAME (IN CAPITALS): ……

CAPACITY: Provincial Head: North West Province

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

The South African National Roads Agency SOC Limited
North West Provincial Office,
38 Ida Street,
Menlo Park, Pretoria,
6025

AUTHORITY TO ACT: SANRAL's Delegation of Powers Item 2.4.1.2

AS WITNESSES:

1. …… ……
SIGNATURE NAME (IN CAPITALS)

2. …… ……
SIGNATURE NAME (IN CAPITALS)

Pro-forma

Sensitivity - General

C1.1.3 APPENDIX TO FORM OF ACCEPTANCE

Schedule of deviations

The deviations listed below constitute agreed deviations to the tender document negotiated between the Tenderer and the Employer based on information provided in Form A4: Schedule of Deviations or Qualifications by Tenderer or imposed conditions of award. Addenda issued during the tender period are deemed not to be deviations to the tender.

1. Subject: .....
   Details: .....

2. Subject: .....
   Details: .....

3. Subject: .....
   Details: .....

4. Subject: .....
   Details: .....

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

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

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

NAME (IN CAPITALS): .....

CAPACITY: .....

NAME AND ADDRESS OF CONTRACTOR: .....

.....

.....

C1.1.4.5 FORM OF BANKING DETAILS

Notes to Tenderer:

1. The Employer applies an Electronic Funds Transfer system for all payments.

2. If you are already registered as a vendor with the Employer, you are required to confirm your banking details in the form below but are not required to submit the documentation as per note 3.1 and 3.2.

3. If you are not registered as a vendor with the Employer, you are required to supply:
   3.1 a completed SANRAL Vendor Application Form (a copy of the Application Form is provided below).
   3.2 an original cancelled cheque bearing your company name and account number; or
   3.3 if you are unable to supply an original cancelled cheque, you are to provide a letter on your letterhead as per the pro forma below and return the original letter to the address as stated in clause 1.3 of C1.2.2 - Information provided by the Employer, delivered by hand or sent by post.

To:
The South African National Roads Agency SOC Limited
Gauteng Provincial Office
38 Ida Street,
Menlo Park, Pretoria,
6025

Dear Sir

CONTRACT SANRAL S.002.003-2018/1 FOR COMMMUNITY AND SMALL CONTRACTOR TRAINING AND DEVELOPMENT ON MADIDI SERVICE ROADS

BANKING DETAILS

By signing this document, we accept the following:

- The banking details submitted are those of ……..(Contractor's name) and we take full responsibility for their correctness.

- We indemnify the Employer from any and all outcomes if an electronic transfer is made into an incorrect bank account using the banking details submitted.

Proforma

Account Name: ..... ……

Bank: ..... ……

Branch Name: ..... ……

Branch Code: ..... ……

Account Number:..... ……

Yours sincerely

.....

Authorised Signatory for …… (Contractor's Name)

DATE: ……

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

APPLICATION FOR VENDOR REGISTRATION

Vendor Name as per Company Registration

.....

Joint Venture (JV)	Yes	No	*If yes provide JV Agreement.

Business Physical Address		**Business Postal Address**	
Town/City		Town/City	
Country		Country	
Postal Code		Postal Code	
Tel. No.		Fax No.	

Company Registration Number	**B-BBEE Status Level**

Income Tax Number	**VAT Registration Number**

CSD Registration Number	**CSD Unique Code**

THIS SECTION MUST BE COMPLETED FOR ALL ELECTRONIC PAYMENTS

Name of Bank

Account Number	**Account Type**

Branch Name	**Branch Code**

Applicant's Authorisation Officer: PRINT NAME

Applicant's Authorisation Officer: SIGNATURE

The following documentation must be submitted with this form:

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

The above should be e-mailed to the relevant office as indicated:

	Head Office: procurementho@nra.co.za
	Northern Region: procurementnr@nra.co.za
	Eastern Region: procurementer@nra.co.za
	Southern Region: procurementsr@nra.co.za
	Western Region: procurementwr@nra.co.za

OFFICIAL USE ONLY

Region:

HO	NR	ER	SR	WR

Type of Vendor:

CONTRACT	SUNDRY	PERSONNEL

Status of Vendor:

NEW	CHANGE	BLOCK	UNBLOCK: REASON

AUTHORISING OFFICER REGION:	AUTHORISING OFFICER HO:

VENDOR NUMBER ALLOCATED:	REFER TO EXISTING VENDOR NUMBER:

INDEMNITY LETTER

SERVICE PROVIDER'S LETTER HEAD AND ADDRESS

… (*insert date*)

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

Attention: Chief Financial Officer

Dear Madam

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

We further confirm that the below are ..... (*insert company's name*)'s correct bank account details, as per the attached CSD Report.

Account Name: ……

Bank: ……

Branch Name: ……

Branch Code: ……

Account No: ……

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

Kind Regards

…….. (signature)

…….. (insert name)

…….. (insert designation)

…….. (insert ID number)

Pro-forma

C.1.1.4.6 TAX COMPLIANCE PERMISSION DECLARATION

Note to Tenderer:

1. In terms of National Treasury Instruction No 3 of 2014/2015 with reference to the Public Finance Management Act, 1999 (Act No 1 of 1999) and Regulations, the Contractor and Subcontractors are required to provide the Employer with written confirmation to access the SARS Electronic Tax Compliance Status (TCS) System to verify and continuously track the tax compliance status of all persons conducting business with the State.
2. The Contractor shall complete the declaration below.

I, ... *(name)*

the undersigned in my capacity as ..... *(position)*

on behalf of .....

..... *(name of company)*

herewith grant consent that SARS may disclose to the South African National Roads Agency SOC Limited (SANRAL) our tax compliance status on an ongoing basis for the contract term.

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

our tax reference number is …….…….. and our tax clearance certificate number is .....

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

SIGNATURE: .....

DATE: .....

Sensitivity - General

C1.2 CONTRACT DATA

C1.2.1 CONDITIONS OF CONTRACT

Note to tenderer:

1. The Conditions of Contract comprise the "General Conditions", which form part of the "Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, First Edition 1999", published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the "Particular Conditions", which include amendments and additions to such General Conditions.

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PART A: GENERAL CONDITIONS – FIDIC AMENDMENTS

Up to February 2026 the following amendments have been issued by FIDIC

ERRATA to the First Edition, 1999

The following significant errata are corrected in this reprinting of the First Edition of the Construction Contract. Several minor typographical errors and layout irregularities have also been corrected.

GENERAL PROVISIONS

Foreword	In figure "Typical sequence of Payment Events envisaged in Clause 14", change "14.11 Contractor issues Final Statement ..." to "Contractor submits Final Statement ...".
Page 2	In the middle of the third line of Sub-Clause 1.1.2.9, delete "under".
Page 26	In the title of Sub-Clause 8.1, substitute "Works" for "Work".
Page 56	In the penultimate line, delete the parentheses "(" and ")".
Page 60	Sub-Clause 20.3, in the line following sub-paragraph (d), delete "Particular Conditions" and substitute "Appendix to Tender".
Page 68	In the third line of Clause 9, delete the two words "notice to".

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS

Page 14	Under Sub-Clause 14.9, delete "EXEMPTION" and substitute "RETENTION".
Annexes	Delete "© FIDIC".

PART B: PARTICULAR CONDITIONS OF CONTRACT

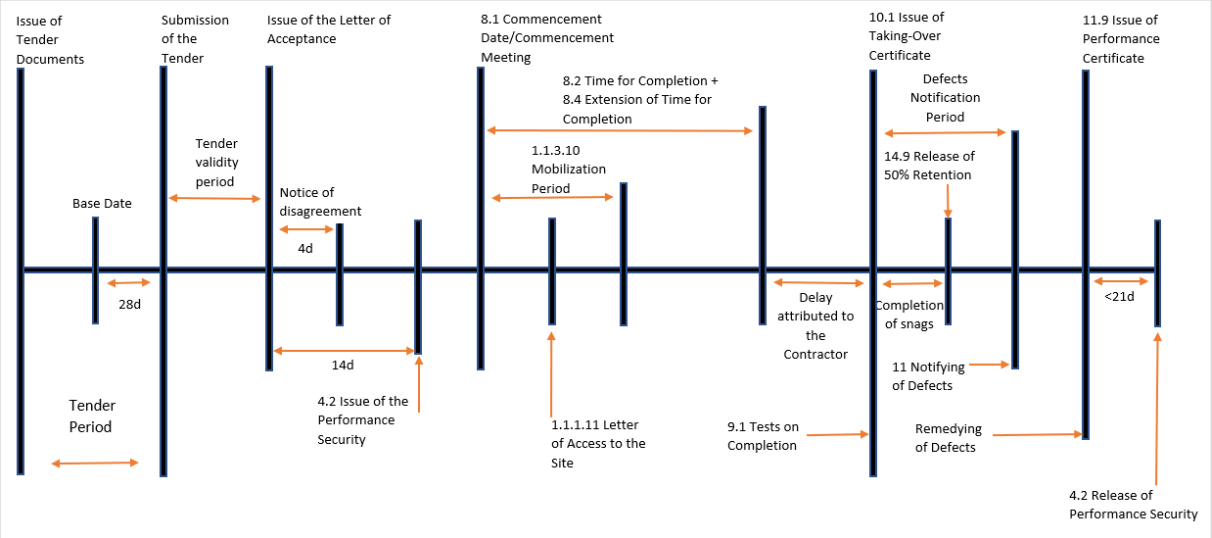
The following amendments are the South African National Road Agency SOC Limited's standard amendments to the FIDIC Conditions of Contract 1999 apply to this contract.

Subject Index	Clause	Subject Index	Clause
Adjustments for Changes in Costs	13.8	Letter of Acceptance Definition	1.1.1.3
Amicable Settlement	20.5	Letter of Access to Site Definition	1.1.1.11
Appendix to Tender Definition	1.1.1.9	Letter of Tender Definition	1.1.1.4
Application for Final Payment Certificate	14.11	Limitation of Liability	17.6
Application for Interim Payment Certificates	14.3	Litigation	20.6
Appointment of the Dispute Adjudication Board	20.2	Mobilisation Period Definition	1.1.3.10
		Notice to Correct	15.1
Bill of Quantities Definition	1.1.1.10	Obtaining Dispute Adjudication Board's Decision	20.4
Care and Supply of Documents	1.8		
Clearance of Site	11.11	Payment	14.7
Commencement of Work	8.1	Payment of Retention Money	14.9
Communications	1.3	Performance Certificate	11.9
Consequences of Employer's Risks	17.4	Performance Security	4.2
Consequences of SuspensionContract Agreement	8.9 1.6	Plant and Materials Intended for the Works	14.5
Contract Definition	1.1.1.1	Priority of Documents	1.5
Contract Price	14.1	Programme	8.3
Contract Requirements for Nominated Subcontractors	5.5	Progress Reports	4.21
		Provisional Sums	13.5
Contractor's Claims	20.1		
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Contractor's General Obligations	4.1		
Contractor's Personnel	6.9	Right of Access to Site	2.1
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Day Definition	1.1.3.9	Site Data	4.10
Definition of Force Majeure	19.1	Specification Definition	1.1.1.5
Delay Damages	8.7	Statement at Completion	14.10
Delayed Payment	14.8	Subcontractors & Suppliers	4.4
Electricity, Water and Gas	4.19	Taking over of the Works and Sections	10.1
Employer's Claims	2.5	Taking over Parts of the Works	10.2
Engineer's Duties and Authority	3.1	Targeted Enterprise Definition	1.1.2.11
Evaluation	12.3	Tender Definition	1.1.1.8
Expiry of Dispute Adjudication Board's Appointment	20.8	Termination by the Employer	15.2
Extension of Time for Completion	8.4	Variation Procedure	13.3
Failure to Agree Dispute Adjudication Board	20.3	Working Day Definition	1.1.3.11
		Working hours	6.5
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Force Majeure Definition	19.1		
Force Majeure affect Subcontractor	19.5		
Fossils	4.24		
Health & Safety	6.7		
Indemnities	17.1		
Insurance for Works and Contractor's Equipment	18.2		
Issue of Interim Payment Certificates	14.6		

PARTICULAR CONDITIONS AMENDING THE GENERAL CONDITIONS OF FIDIC

FOREWORD

Add the following illustrative chart as a clarification of the sequence of the Contract activities as amended in this Particular Conditions:



Typical sequence of Principal Events during Contracts for Construction as amended"

1.1 DEFINITIONS

1.1.1 The Contract

Replace 1.1.1.1 with:

" "**Contract**" means the Form of Offer and Acceptance, Contract Data, these Conditions, the Specifications, the Drawings, the Schedules, and the further documents (if any), which are listed in the Form of Offer and Acceptance, and further includes drawings and documents or parts thereof, which any of the aforesaid documents incorporate by reference."

Replace 1.1.1.3 with:

" "**Letter of Acceptance**" means the Form of Acceptance as contained in part C1.1.2 of the contract documents."

Replace 1.1.1.4 with:

" "**Letter of Tender**" means the Form of Offer as contained in part C.1.1.1 of the contract document."

Replace 1.1.1.5 with:

" "**Specification**" means that document entitled Scope of Work, as included in the Contract, and any additions and modifications to the Scope of Work in accordance with the Contract. Such document specifies the Works."

Replace 1.1.1.7 with:

" "**Schedules**" means the document(s) completed by the Contractor and submitted with his tender offer, as included in the Contract. Such document(s) may include the Bill of Quantities, data lists and schedules of rates and/or prices."

Replace 1.1.1.8 with:

" "**Tender**" means that section of the Form of Offer and Acceptance called 'Offer' and all other documents which the Contractor submitted as Returnable Documents, as included in the Contract."

Replace 1.1.1.9 with:

" "**Appendix to Tender**" means the completed section entitled C1.2.2 Contract Data – Information provided by the Employer included in the Contract Data:"

1.1.1.10 - Add the following:

" "**Bill of Quantities**" shall also mean the Pricing Schedule as contained in Part C2 section C2.2 of the contract document."

Add the following:

"1.1.1.11 "**Letter of Access to the Site**" means a letter issued by the Employer giving the Contractor right of access to the Site in accordance with Sub-Clause 2.1 [Right of Access to the Site]"

1.1.2 Parties and Persons

Add the following:

"1.1.2.12 "**Targeted Enterprise**" means an enterprise defined in Section D of part C3 Scope of Work".

1.1.3 **Dates, Tests, Periods and Completions**

Replace 1.1.3.9 with:

"A "**day**" means a calendar day, except if otherwise indicated in the contract. A "**year**" means 365 calendar days".

Add the following:

"1.1.3.10 "**Mobilisation Period**" means the period as stated in the Appendix to Tender, or the period between the Commencement Date and the date that the Contractor starts with the execution of the Permanent Works, whichever is the shortest.

1.1.3.11 "**working day**" means a day that is not listed as a Special non-working day"

1.3 COMMUNICATION

Add the following:

However, such notice, instruction, consent or request is not deemed to have been delivered by virtue of its appearance in the minutes of meetings."

1.5. PRIORITY DOCUMENTS

Insert the following at the end of the first paragraph before the colon:

"… unless specifically stated otherwise in the contract:".

Replace sub-paragraphs items (a) to (h) with:

i) "the Forms of Offer and Acceptance
ii) the Appendix to Tender within the Contract data
iii) the Particular Conditions of Contract
iv) the General Conditions
v) the project Specification (Scope of Works (Part C3))
vi) the project Drawings,
vii) the standard Specifications,
viii) the Bill of Quantities (Pricing Data (Part C2)); and
ix) the Schedules and any other documents forming part of the Contract."

1.6 CONTRACT AGREEMENT

Replace the 1st two sentences with the following:

"The Parties shall enter into a Contract Agreement when the Employer issues the Form of Acceptance (see Particular Condition 1.1.1.3). The Contract Agreement shall be in the form prescribed in the tender documents"

1.8 CARE AND SUPPLY OF DOCUMENTS

In the 1st paragraph, 2nd line, change "two copies" to "one copy".

In the 2nd paragraph, 3rd line, change "six" to "two".

1.11 CONTRACTOR'S USE OF EMPLOYER'S DOCUMENTS

At the end of the 1st sentence add:

"as well as any research, innovation, industry cutting edge technology and any form of trials undertaken as part of the Contract."

2.1 Right of Access to the Site

At the end of the 1st paragraph add:

"In addition to the Performance Security, there are conditions pertaining to Permits from the Department of Labour, and to the Contract Participation Goal (CPG) Plan, which may result in access to the site being withheld as stated in the Form of Acceptance and Appendix to Tender."

2.5 Employer's Claims

In the 2nd sentence of the 1st paragraph after the words "… Sub-Clause 4.20 *[Employer's Equipment and Free-Issue Material]," add the following:*

"Sub-Clause 8.7 *[Delay Damages]"*

3.1 ENGINEER'S DUTIES AND AUTHORITY

After the 3rd paragraph insert the following:

"In addition to the actions stipulated in the General Conditions whereby the Engineer shall first obtain the approval of the Employer, the Employer's approval shall also be obtained before taking any action under sub-clauses 8.1, 8.8, 10.1,11.9 and13.3 as amended in these Particular Conditions".

Add the following new sixth and seventh paragraphs:

"If the Engineer is a legal entity, a natural person employed by the Engineer and approved by the Employer shall be appointed and authorised to act as the Engineer under the Contract."

4.1 CONTRACTOR'S GENERAL OBLIGATIONS

Add the following sentence to the 1st paragraph:

"With regard to the Contractor's proposals submitted under the item of the Scope of Works titled "Section D: Stakeholder and Community Liaison and Targeted Labour and Targeted Enterprise utilisation and development", if the Contractor fails to provide the employment or training to the extent proposed, the Employer may impose penalties as set out in the above-mentioned Scope of Works."

The Contractor shall obtain Mining Authorisation for all sites where mining activities, as defined in the Mines Health and Safety Act (Act 29 of 1996) as amended, are to be conducted and shall assume responsibility for the Environmental Management Plan (EMP) in respect of the site(s) and shall ensure that the site(s) is/are rehabilitated at the conclusion of the contract.

4.2 PERFORMANCE SECURITY

Replace the 2nd paragraph with:

"The Contractor shall deliver the Performance Security (as stated in the Appendix to tender) to the Employer at least 7 working days prior to the Commencement Date and shall send a copy to the Engineer. The Performance Security shall be issued by an insurance company duly registered in terms of the Insurance Act (Long Term Insurance Act No 52 of 1998 or Short-Term Insurance Act No 53 of 1998) or by a bank duly registered in terms of the Banks Acts (No 94 of 1990 and approved by the Employer and having an office or banking facility in the Republic of South Africa. The Performance Security shall be subject to approval by the Employer and shall be in the form prescribed in the tender documents or in another form approved by the Employer.

Delete the 4th paragraph and replace with the following:

"The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract."

Delete the last paragraph and replace with the following:

"The Employer shall return the Performance Security (as stated in the Appendix to Tender) within 21 days after issuing the Performance Certificate."

4.4 SUBCONTRACTORS

Change the title to read "**Subcontractors and suppliers**"

In the first paragraph delete "the whole of the Works" *and add* "more than the percentage of the Works as stated in the Appendix to Tender without the express approval of the Employer".

In the 1st line of the 2nd paragraph, after the word "Subcontractor" replace the expression "his agents or employees" *with* "suppliers, their agents or employees".

Add the following sub-paragraphs:

"(e) The Contractor shall enter into a written subcontract agreement with the Subcontractor. The subcontract agreement between the Contractor and the Subcontractor shall be the standard FIDIC subcontract agreement (version 2011).

(f) If the Contractor is required to employ one or more Subcontractors under his targeted enterprise development, then the provisions of Sub-Clause 5.4 [*Evidence of Payments*] shall apply as if such Subcontractor is a Nominated Subcontractor.

(g) Each subcontract shall include the provisions:
  (i) The Contractor undertakes to pay the Subcontractor the full value as certified by the Engineer as being due to the Subcontractor in each Interim Payment Certificate, without any deduction for plant, equipment, materials or fuel supplied by the Contractor;
  (ii) If the Subcontractor is a Targeted Enterprise, the Contractor undertakes to make payment within 14 days after the date on which the Subcontractor has submitted a

statement for payment or a claim for payment to the Contractor for work completed or goods delivered in accordance with the contract between the Contractor and Subcontractor;

(iii) If the Subcontractor is not a Targeted Enterprise, the Contractor undertakes to make payment within 30 days after the date on which the Subcontractor has submitted a statement for payment or a claim for payment to the Contractor for work completed or goods delivered in accordance with the contract between the Contractor and Subcontractor

(h) The Contractor shall disclose all subcontracting arrangements.

(i) The Contractor shall not subcontract more than 25% of the value of the contract (including value of work allocated to Targeted Enterprise(s) but excluding work specified in the Scope of Works to be procured through the Employer's Supply Chain Procurement process) to any Subcontractor with a lower B-BBEE status level than the Contractor, unless the intended Sub-contractor(s) is an Exempted Micro Enterprise (EME) that has the capability and ability to execute the subcontract, and the value of the subcontracted work is below the EME threshold.

(j) The total retention money held for all subcontractors shall not exceed the maximum value of the retention money as specified under Sub-Clause 14.3(c) and shall be held pro-rata per subcontractor.

(k) The total value of retention money held from sub-contractors who are Targeted Enterprises shall not exceed 5 percent of the tendered CPG value (for Targeted Enterprises).

(l) 50% of the retention money held for each Subcontractor shall be released on completion of the subcontract works. The remainder of the Subcontractor's retention money shall be released when a Subcontractor's work does not show any defect within 6 (six) months after the completion of the subcontract. However, the Subcontractor's retention money may be withheld but only if the Performance Certificate is unable to be issued because of defective workmanship attributable to the Subcontractor.

(m) No performance security shall be required for Targeted Enterprise sub-contractors.

(n) Penalties for sub-contractors shall be limited to 10% of the accepted sub-contract amount.

(0) All Subcontractors and suppliers shall be registered on the National Treasury's Central Supplier Database (CSD).

(p) All Subcontractors shall be in good standing in terms of COIDA and shall be registered with the Bargaining Council for the Civil Engineering Industry (Government Notice R.490 – Part III contained in Government Gazette No. 37750) or other relevant Bargaining Council.

(q) All Subcontractors shall be registered with the CIDB in the appropriate category for the class of work to be performed.

If the Contractor fail to disclose all subcontracting agreements, or fail to comply with the requirements of this clause he shall be given 14 days to make representation as to why;

(i) the contract shall not be terminated
(ii) the Contractor's penalties shall be limited to 10% of the value of contract.

4.7 SETTING OUT

Amend the second line of the second paragraph to read:

"……reference, provided that the Contractor shall provide proof of their inaccuracy before they are used."

4.10 SITE DATA

In the 1st paragraph, 1st sentence, replace "prior to the Base Date" *with* "either as part of or by reference in the Tender Documents or, otherwise, not later than 7 days before the latest date for submission of the Tender Documents", *and delete the 2nd sentence*.

4.17 CONTRACTOR'S EQUIPMENT

Add the following paragraph:

"The Contractor shall notify the Engineer, in writing, of the names and addresses of the owners of all major items of equipment not owned by the Contractor.

The hire cost or hourly charges or cost of ownership of the Contractor's Equipment shall be included in applicable time-related payment items for which the unit of measurement is month."

4.19 ELECTRICITY, WATER AND GAS

In the 1st paragraph, 1st line, delete "except as stated below", *and delete the 2nd and 3rd paragraphs*.

4.21 PROGRESS REPORTS

In the 1st paragraph, 2nd line, delete "in six copies".

Add the following at the end of the 3rd paragraph:

"(i) Comparison of estimated Contract Price and the original Contract Price as stated in the form of Acceptance, with details of any events or circumstances which may result in the original Contract Price to be exceeded, and the measures being (or to be) adopted to prevent this.
(j) SHE audits, SHE incidents, traffic accidents, Environmental management report, employment, empowerment and training reports (extracted from Employer system), training plan, communication plan, media information, site memos, drawings issued, mix designs, work authorisations, daywork, programme, sub-standard work, cashflow and expenditure, claims, risk report and penalties."
(k) The South African Road Design System (SARDS) platform and updated Construction Quality Assurance module report."

4.22 SECURITY OF THE SITE

Replace the fullstop at the end of subclause (b) with a comma and continue this clause as follows:

"… and authorised utility or service owners whom the Employer or the Engineer identifies as having also been authorised. Without said notice, the Contractor may refuse access to such utility or service owners; and"

4.24 FOSSILS

In the 1st paragraph, 1st sentence after "fossils" *insert* "and graves" *and in the 2nd sentence, add* "and shall indemnify the Employer against any liability arising from such loss or damage."

6.2 RATES OF WAGES AND CONDITIONS OF LABOUR

Add the following:

"The conditions as stated in the Appendix to Tender shall also apply."

6.5 WORKING HOURS

Replace the 1st sentence with the following:

"No work shall be carried out on Site on any special non-working day or within the non-working hours of any day as stated in the Appendix to Tender, unless:"

6.7 HEALTH AND SAFETY

In the 1st paragraph delete the 2nd sentence.
Add the following as a new 4th paragraph:

"The Contractor and his Subcontractors shall be in good standing in terms of the Compensation for Occupational Injuries and Disease Act (COIDA) and have a letter as proof.

Add the following as a new 5th paragraph:

"The Contractor shall also comply to the requirements of the Scope of Works titled, Section E:Requirements of the Occupational Health and Safety act and Regulations.": Occupational Health and Safety Specification."

6.9 CONTRACTOR'S PERSONNEL

Add the following new subparagraphs to the 1st paragraph:

"(e) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice; or
(f) has been recruited from the Employer's Personnel in breach of sub-clause 6.3 [Persons in the Service of Employer]."

Add the following as a final paragraph:

"The requirements for key personnel as stated in the Appendix to Tender shall also apply for the duration of the contract."

8.1 COMMENCEMENT OF WORK

In the 1st paragraph, delete the 1st sentence, and in the 2nd sentence replace "42 days after the Contractor receives the Letter of Acceptance" *with* "28 days of the date of issue of the Form of Acceptance, unless otherwise stated in the Appendix to Tender."

In the 2nd line of the 2nd paragraph, after the words "Commencement Date", *insert* "but within the period stated in the Appendix to Tender."

8.3 PROGRAMME

Delete the contents in its entirety and replace with the following:

"The Contractor shall submit an initial programme for the execution of the Works to the Engineer within 28 days after the Commencement Date. This programme shall be prepared using programming software stated in the Specification (if not stated, the programming software acceptable to the Engineer). The Contractor shall also submit a revised programme which accurately reflects the actual progress of the Works, every month.

The initial programme and each revised programme shall be submitted to the Engineer in one paper copy, one electronic copy and additional paper copies (if any) as stated in the Appendix to Tender, and shall include:
(a) the Commencement Date and the Time for Completion, of the Works and of each Section (if any);
(b) the date right of access to and possession of (each part of) the Site is to be given to the Contractor in accordance with the time (or times) stated in the Appendix to Tender. If not so stated, the dates the Contractor requires the Employer to give right of access to and possession of (each part of) the Site;
(c) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), preparation and submission of Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, installation, work to be undertaken by any nominated Subcontractor (as defined in Sub-Clause 5.1) [*Nominated Subcontractors*] and testing;
(d) the Review periods for any submissions or mix designs stated in the Specification or required under these Conditions;
(e) the sequence and timing of inspections and tests specified in, or required by, the Contract;
(f) for a revised programme: the sequence and timing of the remedial work (if any) to which the Engineer has given a notice to the Contractor under Sub-Clause 7.5 [Rejection] and/or the remedial work (if any) instructed under Sub-Clause 7.6 [Remedial Work];
(g) all activities (to the level of detail stated in the Specification), logically linked and showing the earliest and latest start and finish dates for each activity, the float, and the critical path(s);
(h) the dates of all locally recognized days of rest and holiday periods and special non-working days defined in the Appendix to Tender (if any);

(i) all key delivery dates of Plant and Materials;
(j) for a revised programme and for each activity: the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any);
(k) the expected delays as specified in the specification, resulting from inclement weather, as a terminal float;
(l) embargo hours and days as specified in the specifications and Appendix to Tender;
(m) any restricted working conditions as specified in the specifications and Appendix to Tender;
(n) requirements of the EMP and OHS; and
(o) a support report which includes:
  (i) a description of all the major stages of the execution of the Works;
  (ii) a general description of the methods which the Contractor intends to adopt in the execution of the Works;
  (iii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel, and Sub-contractors, and of each type of Contractor's Equipment, required on the Site, for each major stage of the execution of the Works;
  (iv) the forecast cashflow within the defined contract period relative to the programme;
  (v) if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and
  (vi) the Contractor's proposals to overcome the effects of any delay(s) on progress of the Works.

The Engineer shall Review the initial programme and each revised programme submitted by the Contractor and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations. If the Engineer gives no such Notice:
- within 21 days after receiving the initial programme; or
- within 14 days after receiving a revised programme,

the initial programme or revised programme (as the case may be) shall be the Programme.

The Contractor shall proceed in accordance with the Programme, subject to the Contractor's other obligations under the Contract. The Employer's Personnel shall be entitled to rely on the Programme when planning their activities.

Nothing in any programme, the Programme or any supporting report shall be taken as, or relieve the Contractor of any obligation to give, a Notice under the Contract.

Each Party shall advise the other and the Engineer, and the Engineer shall advise the Parties, in advance of any known or probable future events or circumstances which may adversely affect the work; adversely affect the performance of the Works when completed; increase the Contract Price; and/or delay the execution of the Works or a Section (if any).

The Engineer may request the Contractor to submit a proposal under Sub-Clause 13.3 [Variation Procedure] to avoid or minimise the effects of such event(s) or circumstance(s)."

8.4 EXTENSION OF TIME FOR COMPLETION

In the 1st paragraph after "… will be delayed by any of the following causes" add "and all float in the programme has been utilised".

Amend sub sub clause (c) to the following:

"(c) exceptionally adverse climatic conditions, which for the purpose of these Conditions shall mean adverse climatic conditions at the Site which are exceptional having regard to climatic data made available by the Employer and/or climatic data published in the Country for the geographical location of the Site, and calculated as stated in the Appendix to Tender,"

Add the following new sub sub clause (f):

"(f) rain delays in terms of the Specification Data Clause A1.2.3.4 [Extension of time for delays caused by rainfall]. Claim for rain delays shall not be subject to Sub-Clause 20.1 [Contractor's Claims]. The Cost payable for extension of time due to rain delays, shall be calculated in terms of Specification Data Clause A1.2.3.4 [Extension of time for delays caused by rainfall]."

Add the following as a 3rd paragraph:

"If a delay caused by a matter which is the Employer's responsibility is concurrent (that is the effect of the events are felt at the same time) with a delay caused by a matter which is the Contractor's responsibility, the Contractor's entitlement to Extension of Time shall be assessed after taking into account any contribution to the delay caused by a matter which is the Contractor's responsibility and the Contractor shall only be entitled to Extension of Time if the Employer delay exceeds the Contractor delay."

Add the following as a 4th paragraph:

"An extension of the Mobilisation Period will not form grounds for entitlement to an extension of the Time for Completion and hence, no additional Cost for an extension of the Mobilisation Period shall be payable. Should an extension of the Mobilisation Period result in a delay to the Contract, the Employer's Delay Damages shall apply."

8.7 DELAY DAMAGES

Change the marginal heading of this clause to read "Delay Damages and Other Non-compliance Charges" *and insert the following as a first paragraph to this clause:*

"Delay damages (or Penalties in terms of the Conventional Penalties Act, 1962) and other payments to the Employer for late delivery, failure to achieve intra-programme due dates or non-compliance events shall apply as follows:"

Number the existing two paragraphs as subclause (a) and in the 1st sentence of the 1st paragraph of subclause (a), delete "subject to Sub-Clause 2.5 [Employer's Claims]".

Add the following subclause relating to other non-compliance charges:

"(b) If the Contractor fails to comply with the requirements detailed in the Specification regarding duration of accommodation of traffic closures, meeting intra-programme dates, Accommodation of Traffic requirements, overloading, Contract Participation Targets, subcontracting, quality of work, submission of information and performance criteria, the Contractor shall pay non-compliance charges to the Employer for this default. These non-compliance charges shall be calculated at the rates stated in the Appendix to Tender, which shall be applied for each incident of non-compliance.

These non-compliance charges shall be the only charges due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works. These charges shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract."

8.9 CONSEQUENCES OF SUSPENSION

In the 1st paragraph, delete the wording of sub-paragraph (b) and replace with the following:

"(b) payment of Cost. The Cost payable shall be the Suspension cost calculated in pay item C1.3.1.4 as appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned."

10.1 TAKING OVER OF THE WORKS AND SECTIONS

Add the following to the end of the 2nd paragraph:

"Notwithstanding that there might be natural or programmed sections of the works that will result in them being completed in their entirety before other sections, no consideration shall be given to the issuing of Taking-Over Certificates for parts or sections of the works. The use of any completed roadway, section or parts of the work, whether for unhindered use by the public or for accommodation of traffic while other parts are being constructed, shall not constitute use or

occupation by the Employer. The notice to the Engineer, shall include the Contractor's own list of what it considers to be the minor outstanding works that do not substantially affect the use of the Works. As justification that the issue of a Taking-Over Certificate is warranted the Contractor shall take note that the following activities are to be completed to the satisfaction of the Engineer, and shall not be considered to be minor outstanding work:

(a) The wearing course, gravel, seals, asphalt or concrete pavement;
(b) All above-ground and subsoil drainage structures;
(c) All fencing;
(d) The finishing-off of medians and slopes of cuts and fills;
(e) All the necessary road signs and road-surface marking and road studs;
(f) All guardrails;
(g) All structures;
(h) All lighting (street or area);
(i) The finishing-off of all borrowpits; and
(j) The estimated cost to complete the listed outstanding work is less than 2% of the tendered value of work plus the cost of any variation or extra work orders, but excluding CPA and VAT.
(k) The written lists of outstanding items of work can be completed within 28 days of the lists having been issued.
(l) Any information in the Contractor's possession, which is required by the Engineer and has been requested in writing, has been supplied.
(m) The Department of Mineral Resources (DMR) (or its successor) has issued written confirmation to the Contractor that they are satisfied with the final shaping to all quarries, borrow pits, stockpile areas, and spoil sites used or intended to be used under this contract. In the event this written confirmation is not obtained from DMR, acceptance by the Environmental Assessment Practitioner (EAP) will be sufficient for the issuing of the Taking-Over Certificate.
(n) The Contractor has supplied reasonable evidence that all the labourers have been paid and Subcontractors have received all amounts due in terms of the subcontract agreement provisions."

10.2 TAKING OVER OF PARTS OF THE WORKS

Delete the 2nd paragraph.

Between the 3rd and 4th paragraphs insert the following paragraph:

"The Employer may make use of any part of the Permanent Works prior to the issue of a Taking Over-Certificate."

Delete the 5th paragraph.

11.8 CONTRACTOR TO SEARCH

Add the following after the 1st sentence:

"The programme, methods of investigation, involvement of specialists and estimated cost, for the search for the cause of the defect, shall be determined under the direction of the Engineer in consultation with the Employer and Contractor. The work required to undertake the search shall commence within 28 days of the need for the search being notified to the Contractor (or as otherwise agreed). The method to search for the cause of the defect and the report to be submitted, shall be performed and compiled in terms of the Employer's Framework for Forensic Investigation guideline document, and international best practise. On completion and submission of the Report, the Engineer shall determine in accordance with Clause 3.5 the responsibility and liability for rectifying the defect. The Engineer shall also determine the scope of the remedial measures to be carried out to ensure that the completed work meets the requirements of the Contract."

11.9 PERFORMANCE CERTIFICATE

In the 1st paragraph, 2nd line and in the 2nd paragraph, 1st line, replace the word "Engineer" *with* "Employer".

Delete the last sentence of the 2nd paragraph.

11.11 CLEARANCE OF SITE

Replace the 1st paragraph with the following:

"With the exception of Plant, Materials and Contractor's Equipment required to complete any outstanding work or to remedy defects or damage as notified by, or on behalf of, the Employer and which Plant, Materials and Contractor's Equipment have been agreed by the Engineer and the Contractor, the Contractor shall, upon receipt of the Taking-Over Certificate, remove all Contractor's Equipment and surplus material, wreckage, rubbish and Temporary Works, from the Site unless otherwise instructed by the Engineer."

In the 2nd paragraph, replace "after the Employer receives a copy of the Performance Certificate" *with* "after the issue of the Taking-Over Certificate".

12.3 EVALUATION

Replace the second sentence of paragraph two with the following:

"However, a new rate or price shall be appropriate for an item of work only if notice has been given and if ..."

In sub-paragraph (a)(iv) replace the word "Contract" *with* "Appendix to Tender".

13.3 VARIATION PROCEDURE

Add the following after the 3rd paragraph:

"The Engineer shall obtain the approval of the Employer prior to issuing an instruction to execute a Variation.

Each instruction issued by the Engineer to the Contractor to execute a Variation, unless the Variation is to be executed on a Daywork basis, shall be a written instruction presented in the form of a Works Authorisation (WA). The Works Authorisation Form (WAF) shall be presented by the Engineer to the Employer, who shall signify his approval before the order is signed by the Engineer and issued to the Contractor, who shall acknowledge his acceptance by signing the order. The Contractor shall not accept a Works Authorisation that is not approved and signed by the Employer

If the Contractor considers that an instruction constitutes a Variation, the Contractor shall immediately, and before commencing any work related to an instruction, give a notice to the Engineer with reasons for deeming such instruction a Variation and furnish the Employer with a copy thereof. If the Engineer does not respond within seven days confirming, revoking or varying the instruction, the Engineer shall be deemed to have revoked the instruction."

13.5 PROVISIONAL SUMS

In the 1st line of sub-paragraph (b) after "services" *insert* "and including items for which a prime cost sum has been provided in the Bill of Quantities".

Add the following after the last paragraph:

"The Contractor and Engineer shall follow the procedure as specified in the Project Specification for each Provisional Sum and Prime Cost Sum, prior to any work performed under a Provisional Sum or Prime Cost Sum."

13.8 ADJUSTMENTS FOR CHANGES IN COSTS

Delete from the third sentence of the third paragraph until the end of the sub-clause and substitute:

"The formula shall be as follows:

$$Pt = (1 - x) [(a\ Lt/Lo) + (b\ Et/Eo) + (c\ Mt/Mo) + (d\ Ft/Fo) - 1]$$

where:

"Pt" is the adjustment multiplier, rounded to the fourth decimal place, to be applied to the estimated contract value of the work carried out in period "t", this period being a month unless otherwise stated in the Appendix to Tender;

"x" is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

"a", "b", "c" and "d" are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour (L), equipment (E), materials (M) and fuel (F);

"Lt", "Et", "Mt" and "Ft" are the current cost indices for period "t", each of which is applicable to the relevant tabulated cost element on the last day of the period (to which the Payment Certificate relates); and

"Lo", "Eo", "Mo" and "Fo" are the base cost indices, each of which is applicable to the relevant tabulated cost element on the Base Date.

The base cost indices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer.

Until each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If more than one month intervenes between the month applicable to any Interim Payment Certificate and the month applicable to the immediately succeeding Interim Payment Certificate, then the cost indices "Lt", "Et", "Mt" and "Ft" applicable to the succeeding Interim Payment Certificate shall each be taken as the arithmetic mean, rounded off to one decimal place, of the relevant indices applicable to the month of measurement and to such intervening months.

The value of the relevant Interim Payment Certificate to which the adjustment is to be applied shall be determined by the formula:

$$Ac = T - S - D - G - Ap$$

where:

"Ac" is the value of work carried out in period "t" to which the adjustment is to be applied;

"T" is the summation of the total value of the preliminary and general items, and the work done, as certified in the Interim Payment Certificate under consideration without any deduction whatsoever and before any adjustment made in terms of this Sub-Clause.

"S" is the aggregate of (i), (ii), (iii) and (iv), referred to below, and included in "T" where special arrangements for price adjustments in respect of these amounts were made and recorded at the time the work was ordered:

(i) the amounts actually expended and substituted for any prime cost sums,
(ii) the value of any work done by Nominated Subcontractors,
(iii) the value of any work done against Provisional Sums, and
(iv) the value of any extra or additional work done under a Variation.

"D" is the value of work included in "T" and done at new rates fixed in terms of Sub-Clause 12.3, where those rates are not based on labour, Contractor's Equipment or Materials costs in force at the time of tendering. Generally new rates may be based on current costs and de-escalated to the Base Date of the indices, in which case work done at these rates shall not be included in the value of "D".

"G" is the amount included in "T" for Materials classified and dealt with as Special Materials.

"Ap" is the summation of all "Ac" amounts determined for all Payment Certificates preceding in time the Payment Certificate under consideration.

Save only for Variations ordered to be carried out after the Time for Completion has expired, the Contract Price adjustment factor to be applied to certificates relating to work done or materials supplied after the expiry of the Time for Completion shall be calculated by inserting in the formula referred to in this Sub-Clause the cost indices Lt, Et, Mt and Ft applicable either (i) 49 days prior to the date of expiry of the Time for Completion, or (ii) for the current month: whichever is more favourable to the Employer.

The price of each Special Material specified in the Appendix to Tender shall be increased or decreased by the net amount of any change in price incurred after the Base Date, provided that any claim for adjustment in terms hereof shall be substantiated by the submission of acceptable invoices and any other supporting documents which the Engineer considers necessary for that purpose. However, except for Variations ordered in terms of Clause 13 [*Variations and Adjustments*] all adjustments after expiry of the Time for Completion shall be based on the price of each Special Material either (i) 49 days prior to the date of expiry of the Time for Completion, or (ii) for the current month: whichever is more favourable to the Employer.

For this Sub-Clause, "the net amount of any change in price" in respect of a particular Material referred to as a Special Material shall be calculated by multiplying the difference between the rate or price entered in the Contract by the Contractor for that Special Material and the equivalent rate or price actually paid by the Contractor for the Special Material by the quantity of the Special Material in question."

14.1 THE CONTRACT PRICE

Add the following new clause (e):

"(e) the Contractor shall submit to the Engineer within 28 days after the Commencement Date a full breakdown of all rates. The Engineer may take account of the breakdown when evaluating claims and making Determinations."

14.3 APPLICATION FOR INTERIM PAYMENT CERTIFICATES

In the 1st line of the 1st paragraph, delete "in six copies."

In the 4th line of the 1st paragraph, change "the report" *to* "reports."

In the 2nd paragraph, sub-paragraph (c), after "above amounts" *insert* "and 80% of the value of Materials on Site"

Add the following as a final paragraph:

"If, as stated in the Appendix to Tender, a Retention Money Guarantee is permitted and the Contractor elects to furnish it, the guarantee shall, at the cost of the Contractor, be executed by an insurance company or bank in a form approved by the Employer.

The said company or bank shall be registered or licensed to do business in the Republic of South Africa and shall have an office and banking facility in the Republic of South Africa and shall be subject to approval by the Employer.

The aggregate liability under the guarantee shall be the maximum amount of retention monies to be retained by the Employer, which amount shall be as stated in the Appendix to Tender.

Other conditions, if any, additional to the above standard conditions shall be as stated in the Appendix to Tender.

The guarantee shall expire on the date on which the last of the retention monies (which, but for the guarantee, would have been retained by the Employer) becomes payable to the Contractor.

The guarantee shall be returned to the guarantor upon final payment of the aggregate liability or on the date of expiry, whichever is the earlier."

14.5 PLANT AND MATERIALS INTENDED FOR THE WORKS

In the 1st paragraph delete "If this Sub-Clause applies".

In the 1st paragraph, after the words, "… sent to the Site for incorporation in the Permanent Works," *add*

"or if so agreed in writing by the Employer, Plant and Materials intended for incorporation in the Permanent Works and stored at places other than the Site, and clearly demarcated and identified it as the Employer's property,"

Delete the 2nd paragraph.

In the existing 3rd paragraph add under sub-paragraph (a):

"(iii) ensured that the relevant Plant and Materials have been delivered to and are properly stored on the Site, are protected against, loss, damage, deterioration, and appear to be in accordance with the Contract; and
(iv) provided proof of ownership of the Plant and Materials; and
(v) for Plant and Materials kept off-site, clearly demarcated and identified it as the Employer's property."

In the existing 3rd paragraph, delete sub-paragraphs (b) and (c)

14.6 ISSUE OF INTERIM PAYMENT CERTIFICATES

In the 2nd line of the 1st paragraph replace "28" *with* "14"

Add the following new sentences at the end of the first paragraph:

"No Interim Payment Certificate will be issued or paid unless the monthly progress reports in accordance with amended Sub-Clause 4.21 [*Progress Reports*] are not submitted. After the Engineer has certified the Interim Payment Certificate, the Contractor shall issue a tax invoice to accompany the certified Interim Payment Certificate."

14.7 PAYMENT

In sub-paragraphs (b) and (c) of the 1st paragraph replace "56" *with* "28".

In sub-paragraphs (b) of the 1st paragraph replace "supporting documents" *with* "all supporting documents required in terms of the contract;"

Delete the 2nd paragraph.

14.8 DELAYED PAYMENT

Replace the 2nd paragraph with the following:

"These financing charges shall be calculated at the simple annual rate of two percentage points above the prime lending rate of the South African Reserve Bank.".

In the 3rd paragraph, replace "… entitled to this payment without formal notice …" with the following:

"… entitled to this payment with formal notice …"

14.9 PAYMENT OF RETENTION MONEY

In the 1st sentence of the 1st paragraph, after the word "Works", add the following:

"and all outstanding work and defects as stated in the Taking-Over Certificate have been completed"

14.10 STATEMENT AT COMPLETION

In the 2nd line of the 1st paragraph delete "six" and replace with "three".

14.11 APPLICATION FOR FINAL PAYMENT CERTIFICATE

In the 2nd line of the 1st paragraph delete "six" " and replace with "three".

15.1 NOTICE TO CORRECT

Add the following at the end of the paragraph:

"The Notice to correct shall:

(a) describe the Contractor's failure;
(b) state the Sub-clause and/or provisions of the Contract under which the Contractor has the obligation; and
(c) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.

After receiving a Notice to Correct the Contractor shall immediately respond by giving a Notice to the Engineer describing the measures the Contractor will take to remedy the failure, and stating the date on which such measures will be commenced in order with the time specified in the Notice to correct.

The time specified in the Notice to Correct shall not imply any extension of Time for Completion."

15.2 TERMINATION BY THE EMPLOYER

In the 1st paragraph replace the 1st sentence with the following:

"The Employer shall be entitled to give a Notice to Terminate to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph e), f), g) or h) below, a Notice of Termination, if the Contractor:"

In sub-paragraph (d), after the words "…the requirement agreement," add the following "fails to disclose its subcontractor agreements,"

In sub-paragraph (e), after the words "… or carries on business under a receiver," add the following "or under a business rescue practitioner,"

Delete the word "or" *at the end of sub-paragraph (e) and replace sub-paragraph (f) with the following*:

"(f) gives or has given, offers to give or has offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer or State Department or Organ of State, or

(ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer or State Department or Organ of State,

or if any of the Contractor's Personnel, agents or Subcontractors gives or has given, offers to give or has offered to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination,"

Add the following sub-paragraphs:

"(g) misrepresented, whether innocently, negligently or fraudulently, the true facts requested in the tender documents; or

(h) acts in such a way, on this contract or any other contract with the Employer, that a statute relating to the combating of fraud, corruption, uncompetitive practice and the like can be invoked."

Replace the expression "e) or f)" *in the penultimate line of the second paragraph with*:

Replace the 2nd paragraph with the following:

"Unless the Contractor remedies the matter described in the Notice to Terminate above within 14 days of receiving the Notice to Terminate, the Employer may by giving a Notice of Termination to the Contractor immediately terminate the Contract. The date of termination shall be the date stated in the Notice of Termination.

In the case of sub-paragraph e), f), g) or h) the Employer may by giving a Notice of Termination immediately terminate the Contract and the date of termination shall be the date of the Notice of Termination."

17.1 INDEMNITIES

In the 1st paragraph delete "and" *at the end of sub-paragraph (b)(i).*

Delete the full stop at the end of sub-paragraph (b)(ii) and substitute "," *and insert the following sub-paragraphs:*

"(c) the loss of output and delay caused by the slowing down or partial or total stoppage of work caused by:
  (i) all or any of the Contractor's Personnel or ex-Personnel as a result of a dispute between all or any of the Contractor's Personnel or dismissed Contractor's Personnel and the Contractor, or all or any of the Subcontractor's Personnel and the Subcontractor, and
  (ii) all or any of the Contractor's Suppliers' difficulty or impossibility to deliver goods or materials needed to perform the Works,

(d) any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel or dismissed Contractor's Personnel,

(e) any liability for damage incurred to, or loss of, property within the site identified in the contract documents as not belonging to the Employer regardless of whether or not such damage or loss is caused by the Contractor's equipment,

(f) all damages, losses and expenses (including legal fees and expenses) resulting from the loss of output and delay caused by the slowing down or partial or total stoppage of work caused by:
  (i) all or any of the Contractor's workforce (or dismissed Contractor's Personnel) as a result of a dispute between all or any of the Contractor's Personnel (or dismissed contractor's Personnel) and the Contractor; or
  (ii) all or any of the Contractor's suppliers' difficulty or impossibility to deliver goods or materials needed to perform the Works, and

(g) harm or damage to the environment caused in the performance of the Works."

Add the following final paragraphs:

"To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*], and/or any other design under the Contract, the Contractor shall also indemnify and hold harmless the Employer against all acts, error or omissions by the Contractor in carrying out the Contractor's design obligations that result in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

The Contractor shall indemnify the Employer against any liability for physical damage incurred to, or loss of, property within the Site identified in the Contract as not belonging to the Employer regardless of whether or not such damage or loss is caused by the Contractor's equipment."

17.4 CONSEQUENCES OF EMPLOYER'S RISKS

*In the first sentence of the second paragraph, insert "*to the Works, Good or Contractor's Documents*" after the word "*damage*".*

17.6 LIMITATION OF LIABILITY

In the third line of the first paragraph delete the remainder of the sentence after the comma and substitute:

"other than as specifically provided for in Sub-Clause 8.7 [*Delay Damages*]; Sub-Clause 11.2 [*Cost of Remedying Defects*]; Sub-Clause 12.5 [*Non-compliance Damages*]**;** Sub-Clause 15.4 [*Payment after Termination*]; Sub-Clause 16.4 [*Payment on Termination*]; Sub-Clause 17.1 [*Indemnities*]; Sub-Clause 17.4 [*Consequences of Employer's Risks*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*]."

18.2 INSURANCE FOR WORKS AND CONTRACTOR'S EQUIPMENT

In the 4th paragraph, delete the wording of sub-paragraph (d) and replace with the following:

"(d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (g) and (h) of Sub-Clause 17.3 [*Employer's Risks*], and shall include insurance with the South African Special Risks Insurance Association (SASRIA) that cover loss or damage from the risks listed in sub-paragraph (c) of Sub-Clause 17.3 [*Employer's Risks*], and"

19.1 DEFINITION OF FORCE MAJEURE

In the third line of sub-paragraph 19.1(iii) insert "or suppliers," *after the word* "Subcontractors".

Insert the following as a new 3rd paragraph:

"Events as listed in sub-paragraph (iii) above may only be classified a "Force Majeure" event, if the following additional conditions are satisfied:

(1) The Contractor has engaged with the persons responsible for the riot, commotion, disorder, strike or lockout; has met with the persons or leaders; and has recorded the persons or leaders' details, their grievances, the organisations involved, all threats made; and has requested the persons or leaders to cease all unlawful conduct; and
(2) The Contractor has obtained proof of the riot, commotion, disorder, strike or lockout, and of any unlawful conduct; and
(3) The Contractor has reported all threats and unlawful conduct to the South African Police Service; and
(4) The Contractor has brought an urgent application to the court on an ex parte basis that correctly identify the respondents and define the unlawful conduct to be interdicted; and
(5) The Contractor has ensured that the court order is enforced."

19.5 FORCE MAJEURE AFFECTING SUBCONTRACTOR

Amend the title to read "Force Majeure Affecting Subcontractor and Supplier".

In the first line insert "or supplier" *after the word* "Subcontractor"

20.1 CONTRACTOR'S CLAIMS

In paragraph 5, insert the following after the first sentence:

"If an extension of time is granted the Contractor shall be paid such time-related Preliminary and General allowances as are appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned. Payment of costs additional to the above will only be considered if the costs derive from claims that fall within the terms of Clause 13 [Variations and Adjustments] and/or Sub-clause 17.3 [Employer's Risks]."

Replace the 6th paragraph with the following:

"After receiving a claim or any further particulars supporting a previous claim, the Engineer shall present such claim or particulars to the Employer, together with his recommendations, for a ruling, which ruling shall be given to the Contractor within 42 days after receiving a claim or any further particulars, provided that the said period of 42 days may be extended by application from one Party and approval of the other. If the Employer fails to give his ruling within the specified period, or agreed extension thereto, it shall be deemed that the Employer has dismissed the claim."

Delete the 8th paragraph.

20.2 to 20.8

Replace these sub-clauses with the following:

20.2 SETTLEMENT OF DISPUTES

(a) The Contractor shall have the right to dispute any ruling given or deemed to have been given by the Employer or the Engineer, provided that, unless the Contractor shall, within 42 days after his receipt of a ruling or after a ruling shall have been deemed to have been given, give written notice (hereinafter referred to as a "Dispute Notice") to the Engineer, referring to this Clause, disputing the validity or correctness of the whole or a specified part of the ruling, he shall have no further right to dispute that ruling or the part thereof not disputed in the said Dispute Notice.

(b) All further references herein to a ruling shall relate to the ruling, or part thereof, specified in the Dispute Notice, as varied or added to by agreement between the Contractor and the Engineer or by the Engineer's decision in terms of sub-paragraph (c) or by the Mediator's opinion to the extent that it has become binding in terms of Sub-clause 20.3(f).

(c) The Engineer shall

i) before giving his decision on the dispute, consult the Employer thereon and give the Contractor a reasonable opportunity to present written or oral submissions thereon, which latter shall be confirmed in writing within 7 days
ii) deliver his decision in writing to the Employer and to the Contractor, and
iii) give his decision within 56 days of his receipt of the Dispute Notice, or within any further period as may be agreed between the Engineer and the Contractor, failing which, he shall be deemed to have given a decision affirming, without amendment, the ruling concerned.

(d) Unless either the Employer or the Contractor, shall, within 28 days after his receipt of notice of the decision in terms of sub-paragraph (c)(ii) or after the decision is deemed to have been given in terms of sub-paragraph (c)(iii), have given notice in writing to the Engineer, with a copy to the other Party, disputing the Engineer's decision or a specific part thereof, he shall have no further right to dispute any part of the ruling not specified in his said notice.

(e) If either Party shall have given written notice in compliance with sub-paragraph (d), the dispute shall be referred to mediation in terms of Sub-Clause 20.3 unless either Party has given written notice to the other Party of its intention to refer the matter in dispute to court, which notice shall be given either:

i) within 28 days of receipt of notice of the Engineer's decision, or

ii) within 14 days of receipt by the one Party of the other Party's notice of dispute of the Engineer's decision.

If notice of intention to refer the matter in dispute to Court has been served by either party, the matter in dispute shall not be referred to mediation but shall be referred to Court.

(f) Notwithstanding that the Contractor may, in respect of a ruling, have given a Dispute Notice, the ruling shall be of full force and carried into effect unless and until otherwise agreed by both Parties in terms of Sub-Clause 20.3(f) or as determined in a court judgement.

20.3 MEDIATION

(a) The mediation referred to in Sub-Clause 20.2(e) shall be conducted by a mediator selected by agreement between the Parties or, failing such agreement within 7 days after a written request by either Party for such agreement, nominated on the application of either Party by the President for the time being of the South African Institution of Civil Engineering.

If, for any reason, the person appointed fails to assume or to continue in the office concerned:

(i) the provisions of Sub-Clause 20.3 shall apply mutatis mutandis in the appointment of a successor, and
(ii) in making his nomination in terms of this sub-clause, the president for the time being of the South African Institution of Civil Engineering shall, at his own discretion, act in consultation with the presidents for the time being of Consulting Engineers South Africa and the South African Federation of Civil Engineering Contractors, and
(iii) if the president required to make a nomination in terms of this sub-clause shall have a direct or indirect interest in the subject matter of the dispute, the nomination shall be made by the chief executive officer or the next senior officer of the body concerned who has no such interest.

(b) Neither Party shall be entitled to be represented at any hearing before, or at, any meeting, or in any discussion, with the mediator except by any of the following:

i) the Party himself, if a natural person,
ii) a partner in the case of a partnership,
iii) an executive director in the case of a company,
iv) a member in the case of a close corporation,
v) the Engineer,
vi) a bona fide employee of the party concerned, and
vii) a professional engineer appointed for the purpose by the Party concerned.

(c) The mediator shall, as he deems fit, follow formal or informal procedure and receive evidence or submissions orally or in writing, sworn or unsworn, at joint meetings with the Parties or separately or from any person whom he considers can assist in the formulation of his opinion, provided that:

i) each Party shall be given reasonable opportunities of presenting evidence or submissions and of responding to evidence or submissions of the other Party, and

ii) each Party shall be given full details of any evidence or submissions received by the Mediator from the other Party or any other person otherwise than at a meeting where both Parties are present or represented.

(d) The mediator shall have the power to propose to the Parties compromise settlements of or agreements in disposal of the whole or portion of the dispute.

(e) The mediator shall, as soon as reasonably practical, give to each of the Parties his written opinion on the dispute, setting out the facts and the provisions of the Contract on which the opinion is based and recording the details of any agreement reached between the Parties during the mediation.

(f) The mediator's opinion shall become binding on the Parties only to the extent correctly recorded as being agreed by the Parties in the mediator's written opinion or otherwise as recorded as being agreed in writing by both Parties subsequent to the receipt of the mediator's opinion.

(g) The dispute on any matter still unresolved after the application of the provisions of sub-paragraph (f) shall be resolved by court proceedings.

(h) Save for reference to any portion of the mediator's opinion which has become binding in terms of sub-paragraph (f), no reference shall be made by or on behalf of either Party, in any proceedings subsequent to mediation, to the mediator's opinion, or to the fact that any particular evidence was given, or to any submission, statement or admission made in the course of the mediation.

Irrespective of the nature of the mediator's opinion:

(i) each Party shall bear his own costs arising from the mediation, and

(ii) the Parties shall in equal shares pay the mediator the amount of his expenses and the amount of his fee based on a scale of fees as agreed between the mediator and the Parties before the commencement of the mediation.

20.4 REFERENCE TO COURT

If a dispute is still unresolved as provided for in sub-paragraph (g) of sub-clause 20.3 or the dispute is one described in sub-clause 20.5, the dispute shall be determined by court proceedings, provided that:

(a) nothing herein contained shall deprive the Contractor of the right to institute immediate court proceedings in respect of failure by the Employer to pay the amount of a payment certificate on its due date or to refund any amount of retention money on its due date for refund,
(b) no ruling or decision given by the Engineer in accordance with the provisions of the Contract shall disqualify him from being called as a witness and giving evidence before the court on any matter whatsoever relevant to the dispute concerned;
(c) the court shall have full power to open up, review and revise any ruling, decision, order, instruction, certificate or valuation of the Engineer relevant to the matter in dispute
(d) nothing herein precludes the Employer from approaching the Courts, as a matter of first instance, with regards to any disputes it believes it has against the Contractor and/or in defence to claims made by the latter.

20.5 SPECIAL DISPUTES

Notwithstanding anything elsewhere provided in sub-clauses 20.2, 20.3 and 20.4, any dispute between the Contractor and the Employer,

(a) not relating to a ruling, decision, order, instruction or certificate by the Engineer, or
(b) arising after the completion of the Contract or, if a Defects Notification Period is provided, after the termination of that period,

shall be determined, without the application of the provisions of sub-clauses 20.2 and 20.3 by court proceedings which may be initiated by either Party, in which event the provisions of sub-clause 20.4 shall apply.

20.6 CONTINUING VALIDITY OF SUB-CLAUSES 20.2 TO 20.6

Sub-clauses 20.2 to 20.6 inclusive constitute a separate, divisible agreement from the rest of the Contract and shall remain valid and applicable, notwithstanding that the Works may have been completed or that the rest of the Contract may be void or voidable or may have been cancelled for any reason."

Sensitivity - General

APPENDIX: GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT

Add the following as a 1st paragraph:

"The "Dispute Adjudication Agreement" shall be in the form of the Dispute Adjudication Agreement contained in the Appendix to Part C4 of the Specifications, and the Conditions of the Dispute Adjudication Agreement contained in the Appendix to Part C4 of the Specifications, shall apply."

ANNEX: PROCEDURAL RULES

Add the following as a 1st paragraph:

"The Procedural Rules as contained in the Dispute Adjudication Agreement contained in the Appendix to Part C4 of the Specifications, shall apply."

C1.2.2 APPENDIX TO TENDER: CONTRACT DATA – INFORMATION PROVIDED BY THE EMPLOYER

Notes to Tenderers:

1. This form is the equivalent of the Appendix to Tender as defined in Sub-Clause 1.1.1.9 of the FIDIC Conditions of Contract.

2. Clause numbers (Cl. No.) refer to the FIDIC Conditions of Contract. The prefix A refers to an amendment to these conditions.

Cl NO	**ITEM**	**DATA**
1.1.2.2	Employer	means the South African National Roads Agency SOC Limited instituted in terms of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998) or a person delegated by the South African National Roads Agency SOC Limited to act on its behalf. The Employer's address is: The South African National Roads Agency SOC Limited 48 Tambotie Avenue Val De Grace Pretoria, 0184
1.1.2.4	Engineer	means TBA The engineer's address to be used for this contract is: *Physical address*: TBA *Postal address:* TBA *Email address:* TBA
1.1.3.3	Time for Completion	9 months maximum (including the contractor's holidays in December and January) of which 3 months will be the Mobilisation Period.
1.1.3.7	Defects Notification Period	12 months
A1.1.3.10	Mobilisation Period	3 months maximum commencing on the Commencement Date.
1.3	Electronic transmission system	Email
1.3	Communications	The addresses for communication between the parties shall be: Employer: Physical address: Gauteng Provincial Office, 38 Ida Street, Menlo Park, Pretoria, 0081 Postal address: Private Bag X17

Cl NO	**ITEM**	**DATA**
		Lynnwood Ridge 0040 Email address: TBA
1.4	Law and Language	The law governing this Contract is South African law
2.1	Access to the site	As stated in the Form of Acceptance
A4.2	Performance Security	One Performance Security totalling 10% of the Accepted Contract Amount (excluding VAT) is required.
4.3	Contractor's representative (Construction Manager)	The Construction Manager shall be employed full time on the Works, the single point accountability and responsible for the management of the construction works and shall be registered with SACPCMP as Pr. CMP or ECSA as Pr. Eng or Pr. Tech Eng
A4.4	Subcontractors and suppliers	The percentage of the contract value that may be sublet for the work in Pricing Schedules A and C shall not exceed 50% if the Targeted Enterprises subletting target is equal or less than 30% and not exceed 70% if the Targeted Enterprises subletting target is more than 30%.
A6.2	Rates of Wages and Conditions of Labour	The Contractor and his Subcontractors shall be registered with the Bargaining Council for the Civil Engineering Industry (Government Notice R.490 – Part III contained in Government Gazette N0. 37750) and rates for Wages and Conditions of labour agreed by the Bargaining Council for the Civil Engineering Industry shall apply to the Contractor and his Subcontractors except where a specific industry publishes its own Wage rates and Conditions of Labour.
A6.5	Special non-Working Hours/days	(a) All designated public holidays (including all foreseeable statutory declared election days) (b) The annual shut-down period between December and January (c) Day before Easter Weekend (d) Day of State school term closure and day prior to State school term start (e) Other non-working days and restricted working hours: None (f) Sundays (g) Between sunset and sunrise
A6.9	Contractor's personnel	The Contractor shall provide the key personnel (as indicated in form C1.2.3 - Appendix to Tender: Contract Data – Information Provided by the Tenderer). Where the Key Personnel are no longer available to undertake the necessary work after the award of the contract, the Contractor shall within a period of 14 working days replace the Key Personnel stated in the Appendix to Tender with personnel with equivalent competencies and subject to approval by the Employer. Such approval shall not be unreasonably withheld.
A8.1	Commencement Date	As stated in the Form of Acceptance.
A8.1	Period in which work must commence	Not prior to the date of Access to Site and not later than 3 months after the Commencement Date.

Cl NO	**ITEM**	**DATA**
A8.3	Programme submission	One paper copy and one electronic copy
A8.3(b)	Date(s) of access	As per clause 2.1 Access to site
A8.3(h)	Special non-working days	As per clause 6.5 Working hours
A8.3(i)	Embargo hours and days	Embargo period for seal work as defined in Part C3: Scope of Works, clause A10.1.3.2
A8.3(m)	Restricted working conditions	Accommodation of traffic restrictions During the contractor's annual shutdown period between December and January, the contractor shall maintain two-way traffic within the contract limits. Phase 1: Access to and from affected properties must always be maintained. Traffic accommodation must safely accommodate pedestrian movements. Phase 2: Stop/go control to be used to accommodate traffic Access to and from affected properties must always be maintained. Traffic accommodation must safely accommodate pedestrian movements.
A8.4	Extension of time for completion	An exceptional adverse climatic condition shall be considered where the return period of the climatic condition exceed a return period of 1:10.
8.7 (a)	Delay Damages	Penalties and delay damages shall be R 25 000.00 per calendar day.
A8.7 (b)	Other Non-compliance Charges	Other Non-compliance charges: i. Non-compliance to requirements of clause A8.3(m) for Accommodation of traffic restrictions during the contractor's annual shutdown period between December and January – R10 000.00. /day ii. Accommodation of traffic non-compliance as specified in Part C3 clause A1.5.3.7. (i) Fixed penalty – R20 000.00/occurrence (ii) Time related penalty – R2000.00/hour iii. Overloading – 2 x Unit Rate of material hauled x overload factor x distance hauled as specified in Part C3 clause A1.7.7. The overload factor is the difference between the Actual loaded vehicle mass and the Gross vehicle mass iv. Contract Participation Targets – Calculated as per D1003.05 v. Contract Skills Development Goal – Calculated as per D1010.05 vi. Subcontracting without disclosure or non-compliance to Subcontract agreement requirements – up to 10% of the Contract Price vii. Layer irregularities (i) Base – quantity/100m x unit rate x payment adjustment factor

<table>
<tr><th>Cl NO</th><th>ITEM</th><th>DATA</th></tr>
<tr><td>A12.3</td><td>Evaluation</td><td>The term “fixed rate item” shall apply to all items of work listed in the Pricing Schedule (Including agreed items of work listed in Works Authorisations).</td></tr>
<tr><td>13.6</td><td>Daywork Allowances</td><td>Not required (Dayworks provided for in the pricing schedule).</td></tr>
<tr><td>A13.8</td><td>Special materials</td><td>Bitumen binder extracted from petroleum-based products and used on site, including that used in asphalt, irrespective of whether it is produced and/or placed by the contractor or an approved sub-contractor. Only net bitumen content excluding emulsifiers, diluents or modifiers.

A supplier of bitumen shall be any company that supplies to a Contractor binder with bitumen as the sole or blended ingredient in the binder.</td></tr>
<tr><td>A13.8</td><td>Adjustments for Changes in Cost</td><td>Statistical Releases published by Statistics South Africa.
Base Date: 28 days prior to tender closure.</td></tr>
<tr><td></td><td colspan="2">
<table>
<tr><th colspan="2">TABLE OF ADJUSTMENT DATA</th></tr>
<tr><td>x</td><td>0,15</td></tr>
<tr><td>a =
L =</td><td>0.2
“Labour Index” and shall be the price index for “Consumer Price Index” for the North West Province, as published in the Statistical Release P0141, Table A, of Statistics South Africa.</td></tr>
<tr><td>b =
E =</td><td>0.4
“Equipment Index” and shall be the price index for “Plant and Equipment”, as published in the Statistical Release P0151.1, Table 4, of Statistics South Africa.</td></tr>
<tr><td>c =
M =</td><td>0.25
“Materials Index” and shall be the price index for the “Civil Engineering Material” product Roads, Refurbishment (excl. Bitumen),) as published in the Statistical Release P0151.1,</td></tr>
<tr><td>d =
F =</td><td>0.15
“Fuel Index” and shall be the price index for “Coal and Petroleum Products”, for “Diesel”, as published in the Statistical Release P0142.1, Table 1, of Statistics South Africa.</td></tr>
</table>
</td></tr>
<tr><td>A14.3 (c)</td><td>Retention Money
- Percentage
- Limit
- Guarantee</td><td>10% of value of completed work.
5% of the Accepted Contract Amount (Including VAT)
This will be considered provided that the tenderer submits his proposal as an alternative tender and provided that a discount equal to or more than R500 000.00 is offered.
The discount shall be effected through two equal deductions from IPC 1 and 2.</td></tr>
</table>

Cl NO	**ITEM**	**DATA**
A14.6	Minimum amount of Interim Payment Certificate	R450 000.00 excluding payments during the Mobilisation Period
18.1	Time period for submission of evidence of insurance and copies of insurance	As stated in the Form of Acceptance
18.3	Minimum insurance cover for Injury to persons and Damage to Property	R 20,000,000.00
A20.1	Payment items for calculation of Cost for Extension of Time	Cost for approved extensions of time granted in terms of the Conditions of Contract shall be based only on the applicable payment items for which the unit of measurement is “month” for the period of the delay but excluding payment items with negative rates and non-applicable payment items such as pay item C1.3.1.4

C1.2.3 APPENDIX TO TENDER: CONTRACT DATA – INFORMATION PROVIDED BY THE TENDERER

Note to Tenderers:

1. This form is the equivalent of the Appendix to Tender as defined in Sub-Clause 1.1.1.9 of the FIDIC Conditions of Contract.

1. FIDIC CONDITIONS OF CONTRACT

1.1 Clause 1.3: Communications

The Contractor is .....

Physical Address: .....

Telephone: .....

Facsimile: .....

Email: .....

1.2 Clause 4.3: Contractor's Representative

The authorised and designated representative of the Contractor is:

Name: .....

1.3 Clause A6.9: Contractor's Personnel

The Construction Manager of the Contractor is:

Name: .....

Professional registration: .....

Years' Experience: .....

The Training Provider of the Contractor is:

Name: .....

Professional registration: .....

Years' Experience: .....

The Construction OHS Officer of the Contractor is:

Name: .....

Professional registration: .....

Years' Experience: .....

2. OTHER CONTRACT INFORMATION

……

……

……

3. INFORMATION REQUIRED FOR THE PUBLICATION OF TENDER RESULTS AS PER NATIONAL TREASURY NOTE

Name of Directors	Appointment Date	Designation

SIGNED BY TENDERER: ……