

	Request for Proposal Procurement (RFP) under a Framework Agreement	Form No: UW-FA-RFP-1 Version No: 01/2020 Effective Date: July 2019
	TENDER 2022/004	

You are hereby invited to submit a Proposal for the following requirements

Framework Agreement (FA):	REQUEST FOR PROPOSAL FOR THE MANAGEMENT OF DARVILL SLUDGE LANDS
FA Date:	
FA Reference No.	2022/004

RFQ Ref No.:	2022/004
RFQ Date issued:	30 September 2021 to 08 October 2021
RFQ Closing Date:	28 October 2021

To:	
Supplier's Representative:	
Title/Position:	
Address:	
Telephone:	
Email:	

Request for Quotation (RFQ)

With reference to above Framework Agreement (FA), you are invited to submit a Proposal. The Proposal is for Management of Darvill sludge lands described in Annex 1: Terms of Reference, attached to this RFP.

From:	Umgeni Water
Purchaser's Representative:	<i>Daphne Mseleku</i>
Title/Position:	Contract Buyer
Address:	310 Burger Street, Umgeni Water
Telephone:	[033 341 1550]
Email:	[daphne.mseleku@umgeni.co.za]

Advert Date:	30 September 2021		
RFP Ref Number:	2022/004		
Description of Services:	REQUEST FOR PROPOSAL FOR THE MANAGEMENT OF DARVILL SLUDGE LANDS		
Closing/Due Date:	28 October 2021		Closing Time: 12h00
How to Access Tender documents	Tender documents are available from the Supply Chain Management Office. Due to COVID-19, documents will be ONLY issued electronic via email, upon request and submission of proof of payment to daphne.mseleku@umgeni.co.za , during working hours from 09h00 to 15h00 and date from 30 September 2021 to 08 October 2021		
Compulsory virtual Briefing / Clarification meeting:	“Due to the national lockdown restrictions our meeting will be held on Micro Soft Teams on the 11 October 2021 @ 11h30 and link will be forwarded to respective tenderers before 08 October 2021 .”		
Documents Are Obtainable From:	UMGENI WATER (HEAD OFFICE) Supply Chain Management Unit 310 Burger Street, Pietermaritzburg,3201		
SCM Procedure Enquiries may be directed to:	Daphne Mseleku Tel No. 033 341 1550 daphne.mseleku@umgeni.co.za		
Document is Free	FREE REQUEST FOR PROPOSAL –PRINT , COMPLETE , BIND AND SUBMIT TO UMGENI WATER TENDER BOX		
Submissions:	Proposals clearly marked, REQUEST FOR PROPOSAL FOR THE MANAGEMENT OF DARVILL SLUDGE LANDS UMGENI WATER (HEAD OFFICE) 310 Burger Street Pietermaritzburg, 3201		
Technical Enquiries: (PM – Details)	Contact Person: Mulalo Murigwathoho Email: mulalo.murigwathoho@umgeni.co.za Tel : 033 846 1800		
Contents			
1. Invitation Cover Page 2. Information about the Tenderer 3. Terms and conditions of Request for Proposal (RFP) 4. RFP Specification/s or Scope of Work/ Service Requirements 5. Declaration of Interest 6. Certificate of Acquaintance with RFP T&Cs. 7. Compulsory briefing session on Teams			

This RFP is subject to the general conditions of the RFP, (GCC) and, if applicable, any other special conditions of contract (SCC).

Information about the Tenderer

Name of tenderer	
Registration number	
VAT registration number	
Telephone number	
Cell number	
E-mail address	
Postal address	
Physical address	
Umgeni Water Vendor No.	
CSD Supplier number	
CSD Unique Registration Reference Number	
Contact person's name	

I certify that the information furnished on this form is true and correct. I further accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

Name of tenderer (duly authorised)

Signature of tenderer

Signature of tenderer

Date

TERMS AND CONDITIONS OF REQUEST FOR PROPOSAL (RFP)

1. Any alteration made by the tenderer must be initialled.
2. Use of correcting fluid is prohibited
3. This proposal is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, 2017; the General Conditions of Contract (GCC) and if applicable any other Special Conditions of Contract.
4. Companies must be registered on the National Treasury's Central Suppliers Database.
5. Although the preference point system may not be applicable to this secondary procurement process. Suppliers are required to submit certified copies of valid B-BBEE status Level Verification Certificates for Umgeni Water to keep track of their B-BBEE status level.
6. Proposals must be in accordance and comply with the specifications/scope of work provided, unless otherwise stipulated.
7. There is no pricing expected in this Tender. The evaluation will of the tender will solely be based on the Functional criteria **PART 3**
8. This document may contain confidential information that is the property of Umgeni Water.
9. No part of the contents may be used, copied, disclosed or conveyed in whole or in part to any party in any manner whatsoever other than for preparing a proposal in response to this RFP, without prior written permission from Umgeni Water and the Tenderer.
10. All Copyright and Intellectual Property herein vests with Umgeni Water and its Tenderer.
11. Proposals must be submitted by email scmquotes@umgeni.co.za or be deposited in tender box situated as indicated on the RFP form marked appropriately as directed. *(The applicable submission method is reflected on the cover page)*. Tenderers should ensure that Request for Proposals are delivered before closing time and to the correct address.
12. It is the responsibility of the bidder to ensure that its response reaches Umgeni Water on or before the closing date and time of the RFP.
13. Late and incomplete submissions will not be accepted.
14. Tenderers are required to submit a valid Tax clearance verification PIN.
15. No services must be rendered or goods delivered before an official Umgeni Water Purchase Order form has been received.

The Tenderer accepts the above terms, conditions, and Umgeni Water's Standard Conditions of Tender*.	Accept	Do not accept

*A full copy of UW's Standard Conditions of Tender are available on Umgeni Water's website.

http://www.umgeni.co.za/pdf/cm009_standard_conditions_of_tender.pdf

CONDITIONS OF PROPOSAL

1. I/We hereby quote to supply all or any of the supplies and/or to render all or any of the services described in the attached documents to Umgeni Water on the terms and conditions. In accordance with the specifications stipulated in the quotation documents (and which shall be taken as part of and be incorporated into this proposal) at the prices and on the terms regarding time for delivery and/or execution inserted therein.

2. I/we agree that:
 - (a) the offer herein shall remain binding upon me and open for acceptance by Umgeni Water during the validity period indicated and calculated from the closing time of the proposal;
 - (b) this proposal and its acceptance shall be subject to the Public Finance Management Act, 1999, Umgeni Water's Supply Chain Management Policy and Procedures, the General and Special Conditions of Contract as may be applicable, with which I/we am fully acquainted;
 - (c) if I/we withdraw my proposal within the period for which I/we have agreed that the proposal shall remain open for acceptance, or fail to fulfil the contract when called upon to do so. Umgeni Water may, without prejudice to its other rights, agree to the withdrawal of my proposal or cancel the contract that may have been entered into between Umgeni Water and I/us. I/we will then pay to Umgeni Water any additional expenses incurred for having either to accept any less favourable proposal or, if fresh proposal have to be invited, the additional expenditure incurred by the invitation of fresh proposals and by the subsequent acceptance of any less favourable proposals. Umgeni Water shall reserve the right to recover such additional expenditure by set-off against monies which may be due to me under this, or any other tender or contract or against any guarantee or deposit that may have been furnished by me or on my behalf for the due fulfilment of this or any other tender or contract. Pending the ascertainment of the amount of such additional expenditure to retain such monies, guarantee or deposit as security for any loss Umgeni Water may sustain by reason of my default;
 - (d) if my proposal is accepted, the acceptance may be communicated to me by electronic mail, to the email address supplied in my quotation document;
 - (e) the law of the Republic of South Africa shall govern the contract created by the acceptance of my proposal and I choose *domicilium citandi et executandi* in the Republic at (full physical address)
:
.....
.....

3. I/ furthermore confirm that I/we have satisfied myself as to the correctness and validity of my proposal: that the proposal cover all of the work/item(s) and my obligations under a resulting contract, and I accept that any mistakes regarding the price(s) and calculations will be at my risk.

4. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement, as the Principal(s) liable for the due fulfilment of this contract.

5. I/we agree that any action arising from this contract may in all respects be instituted against me and I/we hereby undertake to satisfy fully any sentence or judgement which may be pronounced against me as a result of such action.

6. I/we confirm that I/we have declared all and any interest that I or any persons related to my business has with regard to this proposal or any related quotations by completion of the Declaration of Interest Section.

7. CERTIFICATION OF CORRECTNESS OF INFORMATION SUPPLIED IN THIS DOCUMENT

I/WE, THE UNDERSIGNED, WHO WARRANT THAT I AM DULY AUTHORISED TO DO SO ON BEHALF OF THE TENDERER, CERTIFY THAT THE INFORMATION SUPPLIED IN TERMS OF THIS DOCUMENT IS CORRECT AND TRUE, THAT THE SIGNATORY TO THIS DOCUMENT IS DULY AUTHORISED AND ACKNOWLEDGE THAT:

- (1) The tenderer will furnish documentary proof regarding any tendering issue to the satisfaction of the Umgeni Water, if requested to do so.
- (2) If the information supplied is found to be incorrect and/or false then Umgeni Water, in addition to any remedies it may have, may: -
 - a) Recover from the contractor all costs, losses or damages incurred or sustained by Umgeni Water as a result of the award of the contract, and/or
 - b) Cancel the contract and claim any damages which Umgeni Water may suffer by having to make less favourable arrangements after such cancellation.

SIGNED ON THIS _____ DAY OF _____ 20 _____ AT _____

SIGNATURE OF TENDERER OR DULY
AUTHORISED REPRESENTATIVE

FULL NAME (IN BLOCK LETTERS)

ON BEHALF OF (TENDERER'S NAME) _____

CAPACITY OF SIGNATORY _____

NAME OF CONTACT PERSON (IN BLOCK LETTERS) _____

POSTAL ADDRESS _____

POSTAL CODE _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

CELLULAR PHONE NUMBER: _____

E-MAIL ADDRESS: _____

CONTRACT PARTICIPATION GOALS

Objective

The objective of Umgeni Water's empowerment initiative is to bring about meaningful transformation in all procurement projects and in particular in the built environment / construction and consulting industry through achieving one or more of the following objectives:

- Meaningful Economic Participation;
- Local Economic Development;
- Transfer of Technical, Management and Entrepreneurial Skills; and
- Creation of sustainable Black Enterprises

Contract Participation Goals

Contract Participation Goal (CPG) – the **final** value of services paid to the CPG Partner/s will be based on the amount to be negotiated during contract award.

During contract implementation, adjustments relating to Provisional Sums and Contingencies linked to the CPG allocation will be agreed upon between the parties to the contract, as and when the need arises.

CPG Partner/s – Service provider/s selected from Umgeni Water's Supply Chain Management (SCM) Enterprise Development Database. However, should the database not contain suitable CPG Partner/s, the tenderer may propose suitable CPG Partner/s for Umgeni Water's consideration.

Tenderers (the main supplier irrespective of BBBEE classification) who are on Umgeni Water's SCM Enterprise Development Database are not exempt from this requirement and are still required to have a CPG Partner.

Tenderers are required to contribute to UW's Contract Participation Goals (CPG) to Enterprises at a scale and value to be determined during Negotiation of the Contract.

Applicability

NOTE: This is a service-based contract, therefore there will be no payments by the employer to the Service Provider. The Service Provider will be liable to pay the employer for the use of the Sludge Lands.

The CPG target will be determined during negotiation stage due to the nature of the Contract and will be adjudicated through the Umgeni Water procurement process and shall be achieved through the following mechanisms:-

- CPG Partner/s selection is concluded **after** adjudication of tenders and **before** contract award is made.
- The CPG Partner/s shall be selected according to the following criteria:
 - CPG Partner/s are to be obtained from Umgeni Water's database of suppliers specifically earmarked for CPG purposes.
 - In the event of services where Umgeni Water does not have an applicable service provider on its database, the tenderer may propose a suitable CPG Partner/s for consideration by Umgeni Water.
- Main service provider may propose a suitable CPG Partner/s, but Umgeni Water reserves the right to provide or arrange a CPG Partner/s to work with the successful company.
- Sub-contracting of the CPG Partner/s at a rate to be determined by UW.
- Value of the work to be sub contracted shall be at least **35% (minimum of 5% shall be due to Black Women Participation)** of the total contract value excluding VAT, CPA and Contingencies.
- CPA is payable to the CPG Partner/s as per the indices stipulated in the contract document.

- The work allocated to the CPG Partner shall be performed by the CPG Partner directly and may not be allocated or sub-contracted out to other contractors/consultants/service providers.
- The main supplier **shall not** substitute any CPG Partner/s without the written approval of Umgeni Water.
- The working capital arrangements between the main supplier and the CPG Partner/s must be agreed upon between the two parties prior to commencement of works to ensure that the CPG Partner does not have cash flow challenges during contract implementation.

Invoicing and Payment- NOT APPLICABLE

The monthly measurement and payment will be according to the following guideline:

- Submission of payment certificate by the Supplier– by 25th of each month, or the nearest previous working day. The submission from the supplier shall include the signature of the CPG Partner indicating agreement with the measurements and rates applicable to the work undertaken by the CPG Partner.
- Payment to the Supplier – on the last day of the following month;
- The CPG Partner must be paid within reasonable time but no later than 3 working days after the Main Supplier has been paid by Umgeni Water; and
- The submission from the Supplier must include a schedule that clearly shows the following:
 - Total Contract Sum
 - Total amount payable to CPG Partner/s excluding current month
 - Amount payable to CPG Partner for current month
 - % split of Total amount payable to Main supplier and CPG Partner/s

Monitoring and Reporting on CPG

- Umgeni Water will monitor CPG implementation on site. This may include direct contact with CPG Partner/s on site for verification purposes.
- The CPG Partner shall be in agreement with the measurement and payment for work completed, for the purposes of submitting payment certificates, as determined by the supplier. Should disagreements arise, Umgeni Water reserves the right to intervene to resolve the disagreement.
- CPG Partner/s shall attend all contractual meetings relevant to their scope of work including contract award negotiations, monthly contract site meetings and technical meetings where applicable.

Eligibility Criteria

For tenders where the CPG target is applicable, those that do not offer a **minimum** CPG participation of **35%** (including minimum 5% Black Women Participation) according to the requirements mentioned above, will be deemed **ineligible**

DECLARATION REGARDING CONTRACT PARTICIPATION GOALS

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

UMGENI WATER

do hereby make the following declaration and certify the statements contained herein to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Declaration and the fully completed bid document accompanying this declaration;
2. I understand and declare that the accompanying bid will, and must, be disqualified if this Declaration is found not to be true and complete in every respect;
3. I understand and declare that in the event that this bid is successful, I will be required to, and shall, fully implement the commitments that are submitted with this bid, in particular regarding the Bidder's contract participation goals and commitments towards the allocation of certain portion of the contract to small and emerging entities. Failure to implement such commitments as outlined in the bid document (in particular, as detailed in the bill of quantities) and or failure to provide the relevant information within the prescribed period as determined in the Letter of Intention to Award the Bid, shall automatically disqualify this bid from further consideration and the Employer has the right to, and must, then award the bid to the next highest ranked bidder; and as a result I or the bidder or any of its directors shall have no recourse against Umgeni Water.
4. I am authorized by the bidder to sign this Declaration, and to submit the accompanying bid, on behalf of the bidder;
5. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
6. I am aware that, and do consent to, the disqualification of my or the bidder's future bids with Umgeni Water in the event that the commitments made herein are not fulfilled and that such non-fulfillment amounts to abuse of Umgeni Water's supply chain policies and procedures and/or empowerment objectives which must be penalized, over and above the contractual sanctions as agreed to in line with the contract signed with Umgeni Water, with a sanction of restricting me and or my company (the bidder) and or any of its directors from conducting business with Umgeni Water for a period not exceeding ten (10) years.
7. I consent that should my company (the Bidder) deviate from the commitments and the spirit of the CPG objectives as agreed to, shall amount to a repudiation of the contractual arrangement between the two parties (Umgeni Water and the Bidder); and Umgeni Water shall have the right to terminate the contract with immediate effect and without giving my company (the Bidder) prior notice to remedy the breach.

Full Names & Surname
(Duly authorized)

Signature

Date

Position

Name of Bidder

SCOPE OF WORK

PART 1.

1. Employer's objectives

Darvill Sludge lands form part of the Darvill Wastewater Treatment Process. The site is the only wastewater treatment facility under Msunduzi Local Municipality. One of the products of the process is digested sludge, which needs to be disposed of properly in accordance with requirements of the NEWWA and sludge Disposal Guidelines. The sludge is currently disposed on a dedicated land. The Employer wishes to appoint a Service Provider to manage the Operation of the sludge lands.

2. Description of the services

Umgeni Water is looking for a service provider to manage and operate the Darvill WWW sludge lands. Originally, the land spanned 59Ha and was leased from Msunduzi municipality. UW is in negotiations with Msunduzi LM for an additional 48Ha and outright purchase of the entire sludge lands area. The service provider is therefore expected to manage the disposal of sludge and operation of the lands, and in turn pay for the use of the lands.

3. Extent of the services

The following activities are expected under the proposed scope of work but not limited to:

- Management of sludge disposal/ irrigation activities on the entire sludge disposal area, including the newly acquired land
- Growing and harvesting of grass/crops for commercial purposes
- Grass cutting and ground maintenance of the area
- Weed and alien vegetation control
- Pest control, including management and suppression of Psychodic flies, rodents and mosquitoes
- Payment of lease to UW as will be determined during Contract finalization
- Purchasing and safe keep/maintenance of equipment for growing and harvesting crops
- Management of dry sludge from other UW sites
- Periodic liming of the lands on a period determined by UW

4. Use of reasonable skill and care

The appointed Service Provider should manage the sludge lands in an environmentally sustainable manner ensuring that appropriate measures are taken to protect the lands. The Service Provider must ensure that all UW Procedures are followed when conducting their work, most importantly Health and Safety Regulation Compliance, Environmental and Labour regulation.

The sludge emanating from the plant is classified as Hazardous waste. Therefore the service provider is expected to ensure there are no spillages, and conditions that may render the area unsafe

5. Co-operation with other services providers

Darvill WWW is currently a construction site, there are several contractors involved. The Service Provider is expected to work harmoniously with the Contractors and other UW Service Providers who might be on-site at any given time

6. **Brief**
All sludge produced needs to be irrigated. The sludge is stored in hogging tanks and Transferred to the lands by a pipe-line.
7. **Reference data**
Darvill WULA, Sludge lands Upgrade report.
8. **Applicable national and international standards**
OHS Act, NEMWA, National Water Act and Sludge Disposal Guidelines
10. **Approvals**
The Service Provider will submit a Safety File for approval prior to commencement of the work. The file will be audited regularly during the performance period. The site Management and Environmental Officer also need to approve the method statement.
15. **Quality management**
The Employer has an ISO Quality Management system in place, as such the Contractor is expected to conform to a Quality Management System
16. **Format of communications**
N/A
17. **Key personnel**
Details must be provided as per T2.2.17 and C1.2 Part 2: Contract Data
18. **Management meetings**
Management meetings will be held on a quarterly basis with the Site Management, and or when required, with prior communication
19. **Forms for contract administration**
N/A
20. **Electronic payments**
N/A
21. **Daily records**
N/A
22. **General indemnity insurances**
Refer to C.1.2 Contract Data Clause 5.4.1 and state number of copies and the place where policies are to be presented.
23. **Payment certificates**
N/A.
24. **Use of documents by the Employer**
N/A
25. **Property provided for the Service provider's use**
The Employer will provide and maintain assets for the discharge and irrigation of sludge onto the lands
26. **Proof of compliance with the law**
Compliance with Labour regulations.

ANNEXES

List by title

Provide data sheets, completed returnable schedules, pro forma documents, particular specifications, drawings, sketches etc. which are referred to in this document.

GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

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

Contract

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

Contract Data

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

Contract Price

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

Day

A calendar day

Defect

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

Deliverable

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

Employer

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

Force Majeure

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

Key Persons

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

Others

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

Parties

The Employer and the Service Provider

Period of Performance

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

Personnel

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

Personnel Schedule

A schedule naming all Personnel and Key Persons

Pricing Data

Data that establishes the criteria and assumptions that were taken into account when developing the monthly levy to be paid to UW and the record of the components that make up the Contract Price.

Project

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

Scope of Work

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

Service Provider

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

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

Start date

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

Subcontractor

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

2. INTERPRETATION

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

3. GENERAL

3.1 Governing law

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

3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both)..

3.3 Language

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

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

3.4 Notices

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

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

3.5 Location

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

3.6 Publicity and publication

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

3.7 Confidentiality

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

3.8 Variations

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

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

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

3.9 Changes to the Contract Price or Period of Performance

3.9.1 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:

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

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

3.10 Sole agreement

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

3.11 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from

any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.12 Penalty

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

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

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

3.13 Equipment and materials furnished by the Employer

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

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

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

3.15 Programme

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

- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;

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

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

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.3 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer and submit such revised programme to the Employer for approval.

3.16 Price adjustment to time-based fees for inflation – Not applicable

3.16.1 Time-based fees shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

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

$$(CPI_n - CPI_s) / CPI_s$$

Where CPI_s = the indices specified in the Contract Data during the month in which the start date falls

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

4. EMPLOYER'S OBLIGATIONS

4.1 Information

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

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

4.2 Decisions

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

4.3 Assistance

- 4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

- a) Authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
- b) Provide all relevant data, information, reports, correspondence and the like, which become available;
- c) Procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
- d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

- 4.3.2 Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

4.4 Services of Others

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

4.5 Notification of material change or defect

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

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

4.6 Issue of instructions

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

4.7 Payment of The Employer

The Service Provider will be paying the Employer a monthly fee for the use of the lands.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

- 5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.
- 5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.
- 5.1.3 The Service Provider will pay the Employer a monthly fee for the use of the lands. This figure will be determined and agreed prior to conclusion and agreement of the terms and conditions of the Contract.

5.2 Exercise of authority

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

5.3 Designated representative

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

5.4 Insurances to be taken out by the Service Provider

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

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

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

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

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

5.6 Co-operation with Others

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

5.7 Notice of change by Service Provider

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

6. CONFLICTS OF INTEREST

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

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

Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

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

6.3 Independence

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

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

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

7.2 Provision of Personnel in terms of a Personnel Schedule

- 7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.
- 7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) Submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

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

8.2 Completion

8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

- a) additional Services ordered by the Employer;
- b) failure of the Employer to fulfil his obligations under the Contract;
- c) any delay in the performance of the Services which is not due to the Service Provider's default;
- d) Force Majeure; or
- e) suspension.

8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.

8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

8.3 Force Majeure

8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.3.2 In the event that the performance of the Services has to be suspended on the grounds of Force Majeure, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

7.3 During the period of his inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

8.4.1 The Employer may terminate the Contract:

- a) where the Services are no longer required;
- b) where the funding for the Services is no longer available;
- c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- d) if the Service Provider becomes insolvent or liquidated; or
- e) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:

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

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

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

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

8.5 Suspension

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

8.6 Rights and liabilities of the Parties

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

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

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

10. SUCCESSION AND ASSIGNMENT

- 10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.
- 10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
- a. by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
 - b. by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.
- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

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

12. RESOLUTION OF DISPUTES

12.1 Settlement

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

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

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

12.3 Adjudication

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

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

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

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

12.4 Arbitration

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

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

13. LIABILITY

13.1 Liability of the Service Provider

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

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to

provide the Services. The Service Provider shall pay to the Employer the amount, which the latter assesses as being the cost of having such Defect corrected by Others.

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

13.2 Liability of the Employer

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

13.3 Compensation

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

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

13.4 Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended), or any other applicable statute of limitation

Neither the Employer, nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 Limit of Compensation

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

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

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

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

13.6 Indemnity by the Employer

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

13.7 Exceptions

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

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

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

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER – NOT APPLICABLE

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

- 14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.
- 14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.
- 14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14..2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.
- 14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

15 AMOUNTS DUE TO THE EMPLOYER

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

CONTRACT DATA

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

PART 1: DATA PROVIDED BY THE EMPLOYER

Clause	Data
	The Employer is Umgeni Water
3.4 and 4.3.2	The authorized and designated representative of the Employer is: Name: Mulalo Murigwathoho The address for receipt of communications is: Telephone: 033 846 1800 E-mail: mulalo.murigwathoho@umgeni.co.za Address: Physical: 07 Portland Road, Mkondeni , 3201 Postal: P O Box 9 Pietermaritzburg 3201 KwaZulu-Natal
1	The Project is the Management Of Darvill WWW Sludge lands.
1	The Period of Performance is 5 Years from the Commencement Date.
3.5	The location for the performance of the Project is Darvill Waste Waterworks
3.12	The Maximum Penalty Amount (MPA) shall be 7.5% of the Contract Price (CP) The Daily Penalty Amount (DPA) payable shall be:
3.15	The programme shall be submitted within 14 Days of the Contract becoming effective.
4.3.1(d)	The Service Provider is not required to assist in the obtaining of approvals, licenses and permits from the state, regional and municipal authorities having jurisdiction over the Project.

5.4.1	The Service Provider is required to provide the following insurances: 1. Public Liability Insurance Minimum Cover is: R5 000 000 (Five million rand) Period of cover: For the period of performance
5.5	The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions: 1 To Gain Access to site 2 Acceptance of the concept presentation
7.2	The Service Provider is required to provide personnel in accordance with the provisions of Clause 7.2 and to complete the Personnel Schedule.
8.1	The Service Provider is to commence the performance of the Services within 14 Days of date that the Contract becomes effective.
8.4.3 (c)	The period of suspension under Clause 8.5 is not to exceed 5 Months.
9.1	Copyright of documents prepared for the Project shall be vested with the Employer.
11.1	A Service Provider may subcontract any work for which he hasn't the skill and competency to perform.
12.1	Interim settlement of disputes is to be by adjudication.
12.2 / 12.3	Final settlement is by arbitration.
12.2.1	In the event that the parties fail to agree on an adjudicator, the adjudicator is nominated by the Association of Arbitrators (Southern Africa).
12.4.1	In the event that the parties fail to agree on an arbitrator, the arbitrator is nominated by Association of Arbitrators (Southern Africa).
13.1.3	All persons in a joint venture or consortium shall carry a minimum professional indemnity insurance of the value stipulated in clause 5.4.1 of the Contract Data
15	The interest rate will be prime interest rate of the Employer's bank at the time that the amount is due.
	The additional conditions of contract are:
1	Delete the word of "Start" from "Start Date" and replace with "Commencement" and substitute the words "Contract Data" with "Form of Offer and Acceptance".

PART 2: DATA PROVIDED BY THE SERVICE PROVIDER

Clause	Data																
1	The Service Provider is. Name: Address: Telephone: Email:																
5.3	The authorized and designated representative of the Service Provider is: Name: The address for receipt of communications is: Address: Telephone: Email:																
5.5 7.1.2	The Key Persons and their jobs / functions in relation to the services are: <table border="1"> <thead> <tr> <th>Name</th><th>Specific duties</th></tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Name	Specific duties														
Name	Specific duties																

Form of offer and acceptance

Offer

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

.....

.....

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

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

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

.....

.....Rand

(in words); R(in figures)

(or other suitable wording)

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

Signature(s)

Name(s)

Capacity

for the
tenderer

(Name and address of Organization)_____

Name and signature _____
of the witness

Date: _____

Acceptance

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

The terms of the contract, are contained in:

Part 1 Agreements and contract data, (which includes this agreement)

Part 2 Pricing data

Part 3 Scope of work.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts 1 to 3 above.

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

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

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Service Provider) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.¹

Signature(s)

Name(s)

Capacity
for the Employer

(Name and address of Organization) _____

Name and signature _____

of the witness

Date: _____

Schedule of Deviations

Notes:

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

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

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

PART 3: EVALUATION

The Bids will be evaluated and adjudicated as follows:

Qualification – evaluation of compliance with Pre-Qualifying Criteria

Only those Bidders which satisfy all of the Pre-Qualifying Criteria will be eligible to participate in the Tendering Process further. Bids which do not satisfy all of the Pre-Qualifying Criteria will not be valued further.

First stage – Functional evaluation

The first stage of evaluation will be based on the functional criteria set out in this RFP. Only those Bidders which score **70** percent or higher (out of a possible 100) during the functional evaluation will qualify to progress to the second stage of the evaluation of the evaluation process. The first stage of the functional evaluation will account 70% of the overall functionality.

The Bid that scores the highest of the overall functionality score will be appointed.

Second stage-Presentation

Those Bidders which have passed the pre-qualification and first stages of the tender process will be subject to a Presentation. The presentation will account for 30% of the total score. The Bidder that scores the highest number of points combined overall will be awarded the tender.

3.1 Qualification: Pre-Qualifying Criteria

The following Pre-Qualifying Criteria will be applied in the initial stage of the evaluation (Section A.2 Checklist). Bidders who do not meet all of the Pre-Qualifying Criteria will not be considered for award of the tender.

Bidders are required to complete the table below by indicating whether they comply with the requirement by marking the appropriate column with an 'X' below. Bidders are required to submit supporting documentation evidencing their compliance with each requirement, where applicable.

Note: A tender that fails to meet any Pre-Qualifying Criteria stipulated herein in the tender documents is an unacceptable tender.

Umgeni Water will only consider submissions from tenderers who satisfy the following criteria:

- a) the Tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
- b) the Tenderer has not:
 - i) abused the Employer's Supply Chain Management System; or
 - ii) failed to perform on any previous contract and has been given a written notice to this effect;
- c) the Tenderer has completed and signed the Declaration of Interest and there are no conflicts of interest which may impact on the Tenderer's ability to perform the contract in the best interests of the Purchaser or potentially compromise the tender process and persons in the employ of the state are permitted to submit tenders or participate in the contract;
- d) the Tenderer has completed and signed the Declaration of Independent Tender Determination and has arrived at the accompanying tender independently from, and without consultation, communication, agreement or arrangement with any competitor.
- e) Tenderers are required to achieve at least 35% Contract Participation Goals (CPG) including a minimum 5% Black Women Participation of the value of goods, services and works paid to one or more targeted enterprises to comply with Umgeni Water's BBBEE policy initiative.

3.2 Stage 1: Functional Criteria

Only those Bidders which score **70** percent or higher (out of a possible 100) during the functional evaluation will be evaluated during the second stage of the Bid. Bidders are required to submit supporting documentation evidencing their compliance with each requirement, where applicable.

The Functional Criteria that will be used to test the capability of Bidders are as follows:

	Points	Weight
Tenderer's Experience	30	70%
Experience of Key personnel	20	
Method Statement	50	
Presentation	100	30%

3.2.1 TENDERER'S EXPERIENCE:

The experience of the Tenderer or joint venture partners in the case of an unincorporated joint venture or consortium will be evaluated on the basis of experience in similar projects or similar areas and conditions in relation to the scope of work.

The evaluation will consider experience in relation to the management of programmes and projects and the provision of cost consulting services in relation to programmes of work as opposed to projects where bills of quantities have been used.

Tenderers should very briefly describe his or her experience in this regard relevant to the scope of work and attach this to this schedule.

The description should be put in tabular form with the following headings:

NOTE:

- 1. Company's experience refers to Previous and Current Contracts of the Tenderer or joint venture partners in the case of an unincorporated joint venture or consortium in services comprising the Management of Wastewater Sludge Handling Facilities**
- 2. Please provide proof of existing and previous Contracts/Lease agreements**
- 3. References provided for previous projects must be contactable**
- 4. The information provided in the table will be used for Evaluation.**

Description of work (service)	Period / Year	Company (Where the Service was provided)	Contact details

Scoring of the Tenderer's experience will be as follows: [30 points]

DESCRIPTION	MAX POSSIBLE PERCENTAGE
[Company experience in services comprising the operation and/or management of / Wastewater Sludge Handling Facilities, e.g., farming, dedicated sludge disposal facilities, sacrificial lands, composting, other sludge beneficiation processes (c (Proof of previous experience is compulsory as it will be used for verification during evaluation. Tenders without proof will not be scored). • 1 Contract/ Project– 30 points • 2 Contracts/Projects– 40 points, • 3 Contracts/Projects – 50 Points • 5 additional points for every project more than 3 projects to a maximum of 50 points]	100

3.2.2 KEY PERSONNEL ASSIGNED TO THE WORK

Insert in the table below the key personnel and their proposed function

KEY PERSONNEL SCHEDULE

No.	Proposed Function	Key Person Name
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

3.2.2 EXPERIENCE OF KEY PERSONNEL

The information provided in the table will be used for Evaluation.

Provide relevant information as prescribed below for the following Key Persons proposed in the tender to fulfil the following positions:

Key Person Positions

A. The Contract Manager

B. The Project Manager

The experience of each key person, relevant to the scope of work, will be evaluated from the following:

- 1) General experience (total duration of activity), level of education and training and positions held by the key person.
- 2) The education, training and experience of the person, in the specific sector, field, subject, etc which is directly linked to the scope of work.

A CV of each key person of not more than 3 pages should be attached to this schedule.

Each CV should be structured under the following headings:

1. Personal particulars
 - name
 - date and place of birth
 - place (s) of tertiary education and dates associated therewith
2. Qualifications
3. Name of current employer and position in enterprise
4. Overview last 10 years of experience (year, organization, position and projects)
5. Outline of recent assignments / experience that has a bearing on the scope of work

The scoring of the experience of key staff will be as follows: [20 points]

The proposed structure for the team for the Contract including CV's showing experience in projects of a similar nature. This must include details of the Contract Manager, and Operations Manager/Specialist for project and must demonstrate the overall multi-disciplinary capability of the team and internal support structures. A good understanding of Wastewater sludge management, WWW sludge by-products and sludge recycling nexus will be an added advantage Experience of Contract Manager in Management of sludge disposal facilities or similar with emphasis in WTR and/ Sludge Management, working experience in the waste management sector, related legislation and the regulatory framework, • <5yrs – 0 points • 5 yrs -10 points • 10yrs – 35 points 5 additional point for every year more than 5 years to a maximum of 50 points Experience of Project Manager in Water and Wastewater treatment, Agriculture, Environmental Management with emphasis in WTR and Sludge Management, working experience in the waste management sector, related legislation and the regulatory framework • <5yrs – 0 points • 5 yrs -10 points • 10yrs – 35 points 5 additional point for every year more than 5 years to a maximum of 50 points	100
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3.2.3 METHOD STATEMENT

The method statement must respond to the Scope of Work and outline the proposed approach / methodology. The method statement should articulate what value the Tenderer will add by in achieving the stated objectives for the project.

The Tenderer must as such explain his / her understanding of the objectives of the assignment and the Purchaser's stated and implied requirements, highlight the issues of importance, and explain the technical approach they would adopt to address them. The approach paper should explain the methodologies which are to be adopted, demonstrate the compatibility of those methodologies with the proposed approach. The approach should also include a quality plan which outlines processes, procedures and associated resources, applied by whom and when, to meet the requirements and indicate how risks will be managed and what contribution can be made regarding value management.

The Tenderer must provide a detailed methodology on the execution of the assignment describing the approach to management of sludge disposal land and demonstration of a business model/plan and financial capability for ensuring the operation of a sustainable business over a period of 5 years (Revenue, cash flows, Operation costs, Market Analysis etc). The response must discuss the following as a guide:

- Management of the contract
- The Market for the crop/Turf and how this is to be maintained
- Operational Plan
- Finance
- Risk Assessment

The Tenderer must attach his / her approach paper to this page. The approach paper should not be longer than **10** pages.

The scoring of the approach paper will be as follows: | 50 points |

Criteria	Description	Maximum Total %
Method Statement		100
	Provide a method statement for the management of Darvill WWW sludge lands/Sludge Disposal facility : • No method statement provided (0) • A basic and generic method statement pertaining to management of sludge disposal facility is supplied (40) • A method statement with satisfactory details of the management and operation of a sludge disposal facility. (70) • A method statement with comprehensive details of the management and operation of a sludge disposal facility. In addition, the market for the crop is defined and a risk assessment of the operation is outlined (90) • A method statement that makes reference to the management and operation of a sludge disposal facility, a financial and Operational plan and risk assessment are supplied. In addition, a clearly define market strategy and maintenance thereof is included. (100)	

PRESENTATION TO UMGENI WATER EVALUATION TEAM (Stage 2)

The presentation constitutes Stage two of the evaluation which will account 30 Percent of the overall the evaluation.

1	PRESENTATION TO UMGENI WATER EVALUATION TEAM The requirements for the Presentation and evaluation thereof are as follows: Presentation must demonstrate a thorough understanding of Wastewater Sludge disposal, sludge management and the ability to operate and manage sludge disposal facilities. - Proven ability to manage disposal site (Financial and Environmental sustainability) - Operational plan for the management of the site - Ability to secure equipment for planting and harvesting crops as well as maintaining the site - Demonstration of viable and sustainable market for crops and the ability to maintain profitability and thus sustainable operations The Tenderer must as such demonstrate in a presentation the understanding of the objectives of the assignment and the Employer's stated and implied requirements, highlight the issues of importance, and explain the technical approach they would adopt to address them. The approach paper should explain the methodologies which are to be adopted, demonstrate the compatibility of those methodologies with the proposed approach. The approach should also include a quality plan which outlines processes, procedures and associated resources, applied by whom and when, to meet the requirements and indicate how risks will be managed and what contribution can be made regarding value management.	Points • Presentation demonstrates most of the requirements – 100 points • Presentation demonstrates some or acceptable understanding and experience of the requirements – 60 points • Presentation demonstrates poor or no understanding and experience of the requirements – 30 points	100
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MINIMUM THRESHOLD (Stage 1 + Stage 2)			70
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