

NEC 3 ECC Option A TENDERING
BID No. DPW50NATN CON001 APPOINTMENT OF A DESIGN AND BUILD CONTRACTOR FOR THE PHOTOVOLTAIC SYSTEM WITH BATTERY ENERGY STORAGE SYSTEM AND GENERATOR SET INSTALLATION ROLL-OUT PROGRAM FOR VARIOUS DPWI CLIENTS.

VOLUME 1_NEC ADDENDUM

ADDENDUM

TO THE

**Engineering and Construction Contract Option A: Priced Contract with
Activity Schedule of April 2013 (including amendments).**

BID No DPW50NATNCON001

**APPOINTMENT OF A DESIGN AND BUILD CONTRACTOR FOR THE
PHOTOVOLTAIC SYSTEM WITH BATTERY ENERGY STORAGE SYSTEM
AND GENERATOR SET INSTALLATION ROLL-OUT PROGRAM FOR
VARIOUS DPWI CLIENTS.**

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INTRODUCTION

1. This addendum is in addition to the NEC: Engineering and Construction contract and each item below is cross-referenced to the clauses contained in the NEC.
2. Clauses not expressly stated in this Addendum shall maintain their meaning and application as contained in the NEC.
3. All words and phrases which are used in the NEC shall bear the same meaning and expressions as if specifically traversed herein.
4. References to clauses, sections, or items in both the NEC and this Addendum shall be interpreted to find their expression within the legislative framework of the Republic of South Africa governing the Engineering and Construction industry.
5. In the event a conflict of whatever nature arises from interpretation of the provisions in the NEC contract and this Addendum, the content of the provisions detailed in this Addendum shall take preference.

Notes:

- a) The Tender Document must be submitted as a whole. All forms must be properly completed as required and the document shall not be taken apart or altered in any way whatsoever.
- b) All forms must be duly completed in **black ink** as required.
- c) The list of returnable documents, which consists of forms and schedules to be completed and company specific certificates and information pages to be attached, comprise the following:

PART 1: C1: AGREEMENT(S) AND CONTRACT DATA REGULATING THE RELATIONSHIP BETWEEN THE PARTIES:

1. (ToR) - APPOINTMENT OF A DESIGN AND BUILD CONTRACTOR FOR THE PHOTOVOLTAIC SYSTEM WITH BATTERY ENERGY STORAGE SYSTEM AND GENERATOR SET INSTALLATION ROLL-OUT PROGRAM FOR VARIOUS DPWI CLIENTS.
2. NEC 3 ENGINEERING AND CONSTRUCTION CONTRACT OPTION A: PRICED CONTRACT WITH *ACTIVITY SCHEDULE* OF APRIL 2013 (INCLUDING AMENDMENTS); AND
3. ADDENDUM TO THE NEC CONTRACT

C1.1 FORM OF OFFER AND ACCEPTANCE

C1.1.1 Offer

The *Employer*, identified in the acceptance signature block, has solicited offers to enter a contract for the procurement of: **Tender No.: Description: APPOINTMENT OF A DESIGN AND BUILD CONTRACTOR FOR THE PHOTOVOLTAIC SYSTEM WITH BATTERY ENERGY STORAGE SYSTEM AND GENERATOR SET INSTALLATION ROLL-OUT PROGRAM FOR VARIOUS DPWI CLIENTS.**

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 exclusive of VAT is	R
Sub total	R
Value Added Tax @ 15% is	R
The offered total of the amount due inclusive of VAT is	R
(AMOUNT IN WORDS)	

This Offer may be accepted by the *Employer* by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the Tender Data or issue a conditional Letter of Acceptance subject to certain conditions which must be fulfilled prior to final acceptance and signing of the acceptance part of this form, whereupon the tenderer becomes or may become the party named as the *Contractor* in the *Conditions of Contract* identified in the Contract Data.

Signature(s):

Name(s):

Capacity:

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For the tenderer:

Name of Tenderer:

Address of Tenderer:

Name of witness:

Signature of witness

Date:

C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 Acceptance

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

The terms of the contract are contained in:

- Part C1: Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2: Pricing data Part C3: Scope of work.
- Part C4: Site information

and the schedules, forms, drawing and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto 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. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), or the date specified in the conditional Letter of Acceptance, whichever date is the earliest, contact the Employer's representative (whose details are given in the contract data or Letter of Acceptance) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data or Letter of Acceptance. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement and the Employer may in its sole discretion accept such repudiation and either appoint one of the other tenderers or cancel the tender and re-issue it.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now *Contractor*) within five days of the date of such receipt or the conditional Letter of Acceptance notified the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature(s)

Name(s)

Capacity

for the Employer Independent Development Trust

Name of witness

Signature of witness Date

Schedule of Deviations

The extent of deviations from the Tender documents issued by the Employer prior to the Tender closing date is limited to those permitted in terms of the Tender Data and the Conditions of Tender.

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

(Any cover letter must be referenced here if applicable, or it will not be valid as part of this submission).

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.

Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated into the final Contract.

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

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and addend thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change to the terms of the offer agreed to by the Tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that any matters agreed to between the Employer and the Contractor prior to signing of this Agreement, shall not have any bearing until reduced in writing and captured as part of this Agreement.

For the Tenderer:

Signature(s)

Name(s)

Capacity

Name of Tenderer

.....

Address of Tenderer

.....

.....

Name of witness

Signature of witness Date

For the Employer:

Signature(s)

Name(s)

Capacity

Name of Employer: **Independent Development Trust**

Name of witness

Signature of witness Date

C1.2 CONTRACT DATA BY THE EMPLOYER

Completion of the data in full is essential to create a complete contract.

Clause	Statement	
1	General	
	<i>The conditions of contract are the core clauses and the clauses for main Option</i>	
		A: Priced contract with activity schedule
	dispute resolution Options	
		W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X7: Delay damages
		X15: Limitation of the Contractor's liability for his design to reasonable skill and Care.
		X16: Retention
		X17: Low Performance Damages
		X18: Limitation of liability
		Z: Additional conditions of contract
	The Employer is:	The Independent Development Trust is a juristic person that is reconstituted and incorporated as a Schedule 2 public entity in terms of the Public Finance management Act, 1 of 1999
	Address:	Glenwood office Park, Corner Oberon & Sprite Streets, Faerie Glen Pretoria 0043
	Represented by:	
	Tel No.	

	Fax No.	
10.1	The Project Manager is:	
	Address:	
	Tel No.	
	e-mail:	
10.2	The Supervisor is:	
	Address:	
	Tel No.	
	Fax No.	
	e-mail:	
11.2(13)	The activity is	THE PHOTOVOLTAIC SYSTEM WITH BATTERY ENERGY STORAGE SYSTEM AND GENERATOR SET INSTALLATION ROLL-OUT PROGRAM FOR VARIOUS DPWI CLIENTS.
11.2(14)	The following matters will be included in the Risk Register	○ Leave site with restricted access to the Contractor; ○ Contractor engagement with local business forum; ○ Compliance with tender requirements; ○ Personnel Clearance and Authorised Access to Site; ○ Matters notified as early warnings; and Decisions resulting from risk reduction meetings; ○ Strikes, delays, disruption(s), blockages or stoppages, community unrest etc., affecting the Accepted Programme and/or the works caused by surrounding communities or Others as a result of circumstances for which the Contractor is not responsible, and which could not have been reasonably avoided
11.2(15)	The boundaries of the site are	As per the locations indicated.
11.2(16)	The Site Information is in	Various Sites in Different Regions to be confirmed

11.2(19)	The Works Information is in	Part 3: Scope of Work.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	Contractor: 7 days Project Manager: 14 days
2	The Contractor's main responsibilities	Scope of work as per the Works Information
3	Time	
11.2(3)	The <i>completion date</i> for the whole of the works is	TBC
30.1	The <i>access dates</i> are	Part of the site Date [•] TBC
30.3	The <i>key dates and conditions</i> to be met are	DATE (_____)
		[•] TBC
		[•] TBC
31.1	The <i>Contractor</i> is to submit a first programme to the Programme Manager for acceptance within	1 week of the Contract Date.
31.2	The <i>starting date</i> is	_____ of _____ 2024
32.2	The <i>Contractor</i> may submit revised programmes at intervals from date of noting such changes which may not be longer than;	1 week
4	Testing and Defects	
42.2	The <i>defects date</i> is	12 months [Completion of the whole of the works]

43.2	The <i>defect correction period</i> is	21 calendar days
5	Payment	
50.1	The <i>assessment interval</i> is	20 th of each month
51.1	The <i>currency of payment</i> is the	South African Rand
51.4	The <i>interest rate</i> is	The interest rate in terms of legislation applicable to the Republic of South Africa
6	Compensation events	No additional compensation events aside from those listed in the Contract
60.1(13)	The place where weather is to be recorded is	On the various sites as part 4
	The <i>weather measurements</i> to be recorded for each calendar month are:	- the cumulative rainfall (mm); • the number of days with rainfall of more than 10mm; • the number of days with minimum air temperature less than 0 degrees Celsius; • the number of days with snow lying at +2 hours GMT;
	The <i>weather measurements</i> are supplied by	Contractor and verified with closest weather station to site.
	The weather data are the records of the past <i>weather measurements</i> for each calendar month which were recorded at	On the various sites as per Part 4 below

60.1(13)	Where no recorded data are available: - assumed values for the ten-year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	- the cumulative rainfall (mm); - the number of days with rainfall of more than 10mm. - the number of days with minimum air temperature less than 0 degrees Celsius; and - the number of days with snow lying at +2 hours GMT;
8	Risks and insurance	
84.1	The <i>Contractor</i> provides these additional insurances: guide: lateral support if applicable, professional indemnity if Contractor does design, SASRIA or any other insurance identified but not included at cl 84.2.	- The supplementary insurance is required. Such insurance shall comprise a Coupon Policy for Special Risks issued by the South African Special Risk Insurance Association. (SASRIA). - Public liability insurance to be affected by the <i>Contractor</i> for the sum of R2 000 000.00 (Two Million Rand) per event with a deductible in an amount that the <i>Contractor</i> deems appropriate. - Professional Indemnity for the sum of R 10 000 000.00 (ten million rand) per claim in respect of <i>Contractors</i> design liability.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table:	None
84.1	The <i>Employer</i> provides these additional insurances:	Nil
84.2	If the Employer is to provide Plant and Materials: - the insurance against loss of or damage to the <i>works</i>, Plant and Materials is to include cover for Plant and Materials provided by the Employer for an amount of	NIL

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84.2	Insurance against loss of or damage to the <i>works</i> , Plant and Materials, without limitation on the number of claims	Insured sum is the total of the Prices plus 10%
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract for any one event is, without limiting the number of claims.	Public liability insurance to be affected by the <i>Contractor</i> for the sum of R2 000 000.00 (Two Million Rand) per event with a deductible in an amount that the <i>Contractor</i> deems appropriate.
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is	as prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than ZAR500 000.00 (Five hundred thousand Rands).
DATA FOR MAIN OPTION CLAUSES		
Option A	Option A: Priced Contract with <i>activity schedule</i>	There is no reference to Contract Data in this Option A and terms in italics are identified elsewhere in this Contract Data.
W1	Data for Option W1	W1
W1.1	The <i>Adjudicator</i> is (Name)	The person appointed jointly by the parties from the list of Arbitrators from Arbitration Foundation of South Africa (AFSA) but subject to the provisions contained in W1.2(3) below.

W1.2(3)	The <i>Adjudicator nominating body</i> is:	In the event of a dispute, the parties shall provide each other with a list of names from which they shall endeavor to agree upon a suitable Adjudicator, provided that where such agreement is not reached within fourteen days of the date upon which the dispute arose, then either party may apply to the nominating body (i.e. AFSA), which shall be authorized to make such appointment.
W1.4(2)	The <i>tribunal</i> is:	Arbitration, arbitrator to be appointed as required.
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by the Arbitrators Foundation of Southern Africa or its successor body.
	The place where arbitration is to be held is	Gauteng, South Africa
	If the parties do not agree on whom the Arbitrator should be, only then shall AFSA choose the suitable Arbitrator.	the Chairman for the time being or his nominee of the Arbitrators Foundation of Southern Africa or its successor body on application of either party.
DATA FOR SECONDARY OPTION CLAUSES		
X7	Delay damages	

	Delay damages for Completion of the whole of the works are	The penalty per calendar day shall be calculated as per the current formula of penalty calculation by the Department of Public Works and Infrastructure up to a maximum of 10% of the contract value. Thereafter, the employer shall have a right during the identified delay period to intervene and accelerate the work or appoint a third party to assist or complete the works to reach practical completion at the planned period. The cost of the appointed third-party work shall be borne by the Contractor. EXAMPLE Estimated contract value = R2 500 000 (excluding VAT) Contract period = 6 months =R2 500 000 X0.0575/100 = R1437-50/day Therefore, rounded off to the nearest R10-00 = R1440-00/day. To a maximum of 10% of the total of prices.
X16	Retention	N/A
X17	Low performance damages	N/A
X18	Limitation of liability	
	The Contractor's liability to the Employer for indirect or consequential loss is limited to:	Unlimited
	For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to:	cost for loss or damages incurred by the Employer, including any payable penalties and any other costs that the Employer sustains in relation to the actual damages caused.
	The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to	cost of the repair or reinstatement of property to original standard and any accompanying costs resultant thereof, that the Employer may claim.
	The Contractors total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	total of the Prices as at the start date as adjusted in terms of X1 if X1 applies to the contract
	The end of liability date is	For latent defects five years after the Completion of the whole of the works.

X20	Key Performance Indicators	The Contractor shall furnish the Employer with monthly performance reports
	The <i>incentive schedule</i> for Key Performance Indicators is in	N/A
PART A - A	Additional Definitions	
Clause	Amendment	
	Add the following new definition as clause 11.2(31):	
	"Baseline Risk Assessment means the baseline risk assessment contemplated in regulation 5(1)(a) of the Construction Regulations."	
	Add the following new definition as clause 11.2(32): "Construction Agent means an "agent" as per the Construction Regulations which means a; competent person who acts as a representative for a client ("client") in this regard being the Employer. The agent contemplated herein: (i) manages the health and safety on a construction project for the client; (ii) is registered with a statutory body (being the South African Council for Project and Construction Management Professions or any other statutory body approved by the chief inspector); and (iii) is qualified to perform the functions required by the Construction Regulations 2014 or as amended. Add the following new definition as clause 11.2(33): "Construction Safety Officer" - means the construction safety officer as defined in the Construction Regulations. Add the following new definition as clause 11.2(34): "Construction Regulations" - means the Construction Regulations as defined in clause 27.4.2 below Add the following new definition as clause 11.2(35) "A <i>Contractor</i> Insolvency Event" means and is considered to occur if: • the <i>Contractor</i> commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of Sections 8 or 9(3)(a)(v) of the Insolvency Act 24 of 1936, as amended or any equivalent legislation in any jurisdiction to which; • the <i>Contractor</i> begins negotiations or takes any other step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of its indebtedness or proposes or makes a general scheme, arrangement, assignment,	

- or composition with or for the benefit of its creditors or a moratorium is proposed or agreed in respect of or affecting

all or a material part of its indebtedness;

- the *Contractor* makes an application to court for business rescue supervision or for its winding-up (whether provisionally or finally);
- a court of competent jurisdiction grants an order winding-up the *Contractor* (whether provisionally or finally) or makes an order placing the *Contractor* under business or rescue supervision.
- an application or other legal process (including the filing of any document commencing judicial process) is issued seeking an order for the winding-up of the *Contractor* (whether provisionally or finally) or placing the *Contractor* under business rescue supervision.
- a resolution is passed by:
 - the shareholders of the *Contractor* for the winding-up of the *Contractor*, whether by way of a members' or creditors' voluntary winding-up; or
 - the board of the *Contractor* voluntarily begin business rescue proceedings and places the company under business rescue supervision.

Add the following new definition as clause 11.2(36)

"Temporary Works" - is all temporary works of every kind required on site for the execution and Completion of the *works* and the remedying of any defects."

Add the following new definition as clause 11.2(37)

"Intellectual Property" means (a) any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods, trade secrets and confidential business information, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off; (b) applications for registration and the right to apply for registration for any of these rights; (c) all other intellectual property rights and similar forms of protection; existing anywhere in the world; and (d) all inventions (whether patentable or non-patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof.

PART B- Amendments and additions to Existing Core Optional Clauses	
Clause	Amendment
12 Interpretation and the law	
12.5	Add the following clauses after clause 12.4: "Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Project Manager</i>, the <i>Supervisor</i>, or the <i>Adjudicator</i> does not constitute a waiver of rights and does not give rise to an estoppel unless the Parties agree otherwise

	and confirm such agreement in writing."
12.6	Words denoting persons or parties shall include individuals and any organisation having legal capacity.
12.7	In this contract, except where the context requires otherwise: a) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing b) "written" or "in writing" means hand-written, type-written, printed, or electronically made, and resulting in a permanent record and mutually consent to by the parties.
12.8	The headings to the sections, clauses, and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the conditions of contract.
12.9	Any word or expression defined in any clause Z, unless the application of the word or expression is specifically limited to the clause in question, bears the meaning prescribed to the word or expression throughout the Z clauses.
12.10	Week means a continuous period of 7 days. If the day for payment of any amount due by the Employer or <i>Contractor</i> in terms of this contract should fall on a Saturday, Sunday or official public holiday in the Republic of South Africa, the relevant day of payment is/are the next ordinary business day in the Republic of South Africa.
12.11	Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
12.12	If any provision of this contract, which is not material to its efficacy, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provision is not in any way affected or impaired thereby and the parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
12.13	Unless otherwise specifically recorded in this contract, termination of this contract for any cause does not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination. Similarly, the termination of this contract does not release a party from any obligation which, by its nature, is intended to survive such termination.
Using the <i>Contractor's</i> design	
22.2	Add core clause 22.2 and 22.3 to read as follows. The <i>Contractor</i> carries out, and is responsible for, the design of the works. The designs are prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the tender document.

22.3	The <i>Contractor</i> shall design, execute, and complete the works in accordance with the contract and warrants that it has the experience and capability necessary for the design,
26	Subcontracting
26.1	clause 26.1 to be amended as follows: The <i>Contractor</i> does not subcontract the whole or any part of the works without the written consent of the Employer, which consent shall be the sole discretion of the Employer. If the <i>Contractor</i> subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a <i>Subcontractor's</i> employees and equipment were the <i>Contractor's</i>. For the avoidance of doubt, the <i>Contractor</i> shall be responsible for the acts or defaults of any of its subcontractors, its agents, or employees, as if they were the acts or defaults of the <i>Contractor</i>.
26.3	clause 26.3 to be amended as follows: The <i>Contractor</i> submits the conditions of contract for each subcontract to the Project Manager and may redact all commercially sensitive information.
26.4	Add a new clause 26.4 as follows: The <i>Contractor</i> shall procure from the Subcontractor, all consents required to ensure that all the rights and obligations the <i>Contractor</i> may have under the subcontracts can be ceded and delegated to the Employer.
26.5	Add a new clause 26.5 as follows: • If the <i>Contractor</i> does not make payment of any amount due and payable by him to a Subcontractor ("the Subcontractor debt") and the Project Manager considers that the Subcontractor debt adversely impacts on the progress of the Works or the obligations of the <i>Contractor</i> under the contract, Project Manager requests evidence of payment to the Subcontractor. In the absence of such evidence, the Employer may (at its own discretion) pay the Subcontractor debt directly to the Subcontractor concerned in which event such payment is, for all purposes under the Contract, regarded as a payment made on behalf of the <i>Contractor</i> and at the request of and with the approval and consent of the <i>Contractor</i>, as a payment towards the Prices. Payment to the Subcontractor is conducted in terms of clause 50.2 of the contract.
26.6	Add a new clause 26.6 as follows: All adverse effects because of any conduct of the Subcontractor; or arising from the Subcontractor's debts does not result in a compensation event.
27	Health, safety, and the environment
27.5	The following clauses are hereby added as follows;
27.5.1	The <i>Contractor</i> takes all reasonable steps and precautions to assess the Site, consider and receive all relevant information on the Site and health and safety related to the works, maintain the health and safety of persons in and about the execution of the works.
27.5.2	The <i>Contractor</i> acknowledges that the Occupational Health and Safety Act No. 85 of 1993 Edition 23(latest edition) and the regulations promulgated therein ("the Act"); and the

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	Construction Regulations 2014 promulgated under the Act ("the Construction Regulations"), including Code of Practice: Managing exposure to SARS-CoV-2 in the workplace will in all respects be applicable to this contract and the <i>works</i> .
27.5.3	The <i>Employer</i> appoints the <i>Turnkey Contractor</i> as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014) for the Site.
27.5.4	Accordingly, the <i>Contractor</i> is responsible for all duties of the "Principal Contractor" as defined and provided for under the Act and the Construction Regulations 2014 including but not limited to those obligations defined and provided for in Annexures A, B and C and all required Regulations and Standards applicable to the work of this contract.

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27.5.5	The <i>Contractor</i> shall appoint a registered full-time Construction Health and Safety Officer (Pr. CHSO/ SACPCMP) for the Works and all other site-specific appointments as per Legislation requirements.
27.5.6	The <i>Contractor</i> shall appoint a <i>Registered Competent Person as per Legislative requirements.</i>
27.5.7.	The <i>Contractor</i> confirms that it has received sufficient information about the Site and the works to: • comply with the provisions of the Act and the Construction Regulations 2014, • comply with the provisions of this clause. adhere to the <i>Employer's</i> health and safety baseline specification and SHEQ Policy as set out in Annexures A, B and C; • be properly appointed in accordance with Section 37(2) of the Act as contemplated in clause 27.5.3; • and to prepare a site-specific Baseline Risk Assessment.
27.5.8	The <i>Contractor</i> acknowledges that the Project Manager acts as the <i>Employer's</i> "Implementing Agent" in respect of all obligations which the <i>Employer</i> has as "Client" in the Construction Regulations 2014 and the Act.
27.5.9	Without limitation, the <i>Contractor</i> .
27.5.9.1	notwithstanding any actions which the <i>Employer</i> may take, accepts sole liability for due compliance with the relevant duties, obligations, prohibitions, arrangements, and procedures imposed by the Act, all its regulations (including the Construction Regulations), Code of Practice. Managing exposure to SARS-CoV-2 in the workplace and Annexures A, B and C. By concluding this contract, it shall be deemed that the parties have agreed in writing to the above provisions in terms of Section 37 (2) of the Act;
27.5.9.2	acknowledges and confirms that the Prices includes enough for proper compliance with the Construction Regulations 2014, Code of Practice. Managing exposure to SARS-CoV-2 in the workplace, all applicable health and safety laws, regulations, rules, guidelines, procedures, and all obligations imposed by this contract and Annexures A, B and C and generally for the proper maintenance of health and safety in and about the execution of works;
27.5.9.3	• undertakes, in and about the execution of the <i>works</i>, to comply with all applicable health and safety laws, regulations, rules, guidelines and procedures otherwise provided for under this contract and shall ensure that all sub-Contractors, employees and Others under • the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing; and

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27.5.9.4	indemnifies the <i>Employer</i> against any loss, damage or claim suffered by the <i>Employer</i> due to a failure to comply with any provision of this clause 27.4 by the <i>Contractor</i> .
27.5.9.5	acknowledges and confirms that a Health and Safety Consultant (Pr.CHSM/ SACPCMP) will be appointed by the <i>Contractor</i> for the Project and that the Prices includes enough for the appointment of such
27.5.10	The <i>Contractor</i> and his designer shall accept full responsibility and liability to comply with the Act, the Construction Regulations and Annexures A, B and C for the design of the Temporary Works and those parts of the Permanent Works which the <i>Contractor</i> is responsible to design in terms of this contract;
27.5.11	The <i>Employer</i> retains a right to inspect, review, obtain copies of all documents regarding, attend and participate in all meetings regarding; all inquiries, audits and reports conducted under this contract including but not limited to those that are conducted in accordance with;
27.45.111	Annexures A, B and C of this contract; and
27.5.11.2	Section 31 and/or 32 of the Act, its regulations and the Construction Regulations following any incident involving the Turnkey <i>Contractor</i> and/or sub-Contractor and/or their employees.
27.5.11.3	The <i>Contractor</i> shall notify the Project Manager and copy in the <i>Employer</i> in writing of all inquiries, audits, reports, investigations, complaints, or criminal charges which may arise pursuant to works performed under this contract.
27.5.11.4	The <i>Employer</i> and the Project Manager shall, always during construction and for a period of 5 (five) years after Completion, have the right to access and inspect any part of the Site/ works and all documents, reports, designs, specifications whatsoever that are prepared pursuant to any clause of this contract.
27.5.11.5	The <i>Contractor</i> liaises with the <i>Employer</i> and the Project Manager regarding all issues related to this clause 27, and, complies with all reasonable requests from the Project Manager to (i) attend any meetings and/or (ii) provides any documents, audits and reports; required by the <i>Employer</i> or Project Manager.
27.5.11.6	The <i>Contractor</i> complies with the Baseline Risk Assessment provided by the <i>Employer</i> , <i>Project Manager</i> or <i>Construction Health and Safety Consultant</i> . Notwithstanding the foregoing, the <i>Contractor</i> prepares its own Baseline Risk Assessment and complies with it where such Baseline Risk Assessment provides additional risks to those noted by the <i>Employer</i> or the <i>Project Manager</i> .
4	Testing and defects
40.	Testing and inspection

40.1	This clause only applies to tests and inspections required by the Works Information or the applicable law.
40.2	Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Supervisor, the time and place for the specified testing of any Plant, Materials and other parts of the Works.
40.3	The <i>Contractor</i> and the Supervisor each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The <i>Contractor</i> notifies the Supervisor in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The Supervisor may watch any test done by the <i>Contractor</i> .
40.4	If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect and the test or inspection is repeated.
40.5	The Supervisor does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a Supervisor's test or inspection being successful becomes due at the later of the defects date and the end of the last defect correction period if: . the Supervisor has not done the test or inspection and . the delay to the test or inspection is not the <i>Contractor's</i> fault.
40.6	The Project Manager assesses the cost incurred by the Employer in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.
41	Testing and inspection before delivery
41.1	The <i>Contractor</i> does not bring to the Working Areas Those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the Supervisor has notified the <i>Contractor</i> that they have passed the test or inspection.
42.	Searching for and notifying Defects
42.1	Until the defects date, the Supervisor may instruct the <i>Contractor</i> to search for a Defect. He gives his reason for the search with his instruction. Searching may include • uncovering, dismantling, re-covering and re-erecting work, • providing facilities, materials and samples for tests and inspections done by the Supervisor and • doing tests and inspections which the Works Information does not

	require.
42.2	Until the defects date, the Supervisor notifies the <i>Contractor</i> of each Defect as soon as he finds it and the <i>Contractor</i> notifies the Supervisor of each Defect as soon as he finds it.
43	Correcting Defects
43.1	The <i>Contractor</i> corrects a Defect whether or not the Supervisor notifies him of it.
43.2	The <i>Contractor</i> corrects a notified Defect before the end of the defect correction period. The defect correction period begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
43.3	The <i>Supervisor</i> issues the <i>Defects Certificate</i> at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> . The <i>employer's</i> in respect of a Defect which the Supervisor has not found or notified are not affected by the issue of the Defects Certificate.
43.4	The <i>Project Manager</i> arranges for the <i>Employer</i> to allow the <i>Contractor</i> access to and use of part of the works which he has taken over if they are needed for correcting a Defect. In this case the <i>Defect correction period</i> begins when the necessary access and use have been provided.
44	Accepting Defects
44.1	The <i>Contractor</i> and the <i>Project Manager</i> may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
44.2	If the <i>Contractor</i> and <i>Project Manager</i> are prepared to consider the change, the <i>Contractor</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Project Manager</i> for acceptance. If the <i>Project Manager</i> accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.
45	Uncorrected Defects
45.1	If the <i>Contractor</i> is given access in order to correct a notified Defect but he has not corrected it within its defect correction period, the <i>Project Manager</i> assess the cost to the <i>Employer</i> of having the Defect corrected by other people and the <i>Contractor</i> pays the amount. The Works Information is treated as having been changed to accept the Defect.

45.2	If the <i>Contractor</i> is not given access in order to correct a notified Defect before the defects date, the <i>Project Manager</i> assess the cost to the <i>Contractor</i> of correcting the Defect and the <i>Contractor</i> pays this amount. The Works Information is treated as having been changed to accept the Defect.
5	Payment
51.2	Amend this clause by deleting the second and the third sentences of the clauses and replace them with the following: Each certified payment is made on the last working day of the following month after receipt of the <i>Contractor's</i> tax invoice which complies with the <i>Contractor's</i> certificate of an amount due at each assessment date.
51 payment	Add the following new clauses after clause 51.4.
51.5	Within one week of receiving a payment certificate from the <i>Project Manager</i> in terms of clause 51.1, the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employees</i> procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
51.6	If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice.
51.7	The <i>Contractor</i> (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number on each invoice the <i>Contractor</i> submits for payment.
61	Notifying compensation events
61.3	<i>Amend the last paragraph of the clause 61.3 to read.</i> <i>"If the Contractor does not notify a compensation event within four weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date."</i>
62.3	<i>Add to clause 62.3,</i> <i>"The Programme Manager's reply which is an acceptance of a compensation event shall require the due authority of the Employer."</i>
62.5	<i>Add to clause 62.5,</i>

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	<i>"The Project Manager notifies the Contractor if the Employer's authority is required and includes in his notification any extension to the period within which he is required to reply to the Contractor's quotation. In the absence of reply within such period the quotation is to be treated as rejected."</i>
9.	Termination
91.1	Amend this clause by the addition of the following at the end of the second main bullet point, fourth sub-bullet point, after the words "against it": <i>"Or the Contractor commits a Contractor Insolvency Event (R5),"</i>
91.2	Amend this clause sub-bullet point two (R12) to read as follows: <i>"Not provided an on-demand performance bond or guarantee which this contract requires and/or failed to renew on-demand performance bond or guarantee upon expiry (R12)".</i>
91.3	Amend this clause by adding the following at the end of the clause: • failed to comply with the provision of Clause Z3 (<i>Broad Based Black Economic Empowerment</i>) (R24). and for terminating for R22 to R24 the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply."
91.8	Add a new clause 91.8 as follows: The Employer terminates if the <i>Contractor</i> reaches 10 % of the delayed damages amount being the maximum amount. (R25). When terminating for R25 - the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply.
9.	Insert the following new clause 9.4
9.4 Termination for convenience	The <i>Employer</i> is entitled to terminate the Contract, at any time for the <i>Employer's</i> convenience, by giving notice of such termination to the <i>Contractor</i> . The termination shall take effect 28 days after the later of the dates on which the <i>Contractor</i> receives this notice or the <i>Employer</i> returns the performance bond and all monies held in retention, unless there are outstanding calls/claims thereon in which event, and if applicable, the <i>Employer</i> returns the performance bond and all monies held in retention promptly after the last of the outstanding calls/claims have been met. The <i>Employer</i> does not terminate the Contract under this sub-clause to execute the <i>works</i> himself or to arrange for the <i>works</i> to be executed by another <i>Contractor</i> . The same procedures on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table in clause 90.2 apply. The <i>Contractor</i> shall only be entitled to costs incurred at the date of termination.

Option X2: Changes in the Law	Amend this clause by the addition of the following new clause:
X2.2	Notwithstanding anything contained in this clause or this agreement, a "change in law" does not include any law or piece of legislation that is enacted or made but not yet in force as at the date when the tender is submitted, or any proposed or draft law that is promulgated or issued for comment at any time before the tender is submitted if and to the extent that such law when enacted or made and brought into effect is materially unchanged.
PART C - Additional Clauses (entitled Z-Clauses)	
Z1	Cession delegation and assignment
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .
Z1.2	Notwithstanding the above, the <i>Employer</i> may, on written notice to the <i>Contractor</i> , cede and delegate its rights and obligations under this contract to a Related Party or a Client of the <i>Employer</i> , <i>provided the Employer consents to such</i> . For the purpose hereof;
Z1.2.1	A "Client" means the employer and includes its successors in title and permitted assignees under this agreement;
Z1.2.2	a "related party" means any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the employer and includes any other "Organ of State" as defined in section 239 of the Constitution of the Republic of South Africa, 1996 and any entity or Organ of State for whom the employer carries out the works or acts as an implementing agent; and
Z1.2.3	"Control" means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity's assets), and/or the right or ability to direct or otherwise control the entity or the votes attaching to most of the entity's equity and "controlled" or "under common control" shall have a similar meaning.
Z2	Joint ventures
Z2.1	If the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organizations then these persons or organizations are deemed to be jointly and severally liable to the <i>Employer</i> for the performance of this contract.
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organizations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority

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	to bind the <i>Contractor</i> on their behalf.
Z2.3	The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.
Z3	Broad Based Black Economic Empowerment, Construction Industry Development Board grading and the valid and active Tax Compliance Status Pin issued by SARS.
Z3.1	The <i>Contractor</i> warrants that it will:
Z3.1.1	comply with all laws including the <i>Broad Based Black Economic Empowerment Act 53 of 2003</i> , its regulations and Codes of Good Practice; and the <i>Preferential Procurement Act 5 of 2000</i> and all its regulations;
Z4	Change of Broad Based Black Economic Empowerment (B-BBEE) status
Z4.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractors</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.
Z4.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> .
Z4.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractors</i> obligation to Provide the Works.
Z4.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
Z5	Ethics
Z5.1	For the purposes of this Z-clause, the following definitions apply: Affected Party means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all these parties' relatives or friends, Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, Committing Party means, as the context requires, the <i>Contractor</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

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	Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to influence the actions of an Affected Party unlawfully or illegally, Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.
Z5.2	A Committing Party may not take any Prohibited Action during the procurement of this contract or in execution thereof
Z5.3	The Employer may terminate the <i>Contractor's</i> obligation to Provide the Works if a Committing Party has taken a Prohibited Action and the <i>Contractor</i> did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Employer has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the Employer can terminate the <i>Contractor's</i> obligation to Provide the Works for this reason. If the Employer terminates the <i>Contractor's</i> obligation to Provide the Works for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
Z5.4	A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the Employer does not have a contractual bond with the Committing Party, the <i>Contractor</i> ensures that the Committing Party co-operates fully with an investigation.
Z5.5	Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract, including Fronting as referenced in Sub-Clause Z3.1.3, constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).
Z5.6	The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> (or any member of the <i>Contractor</i> where the <i>Contractor</i> constitutes a joint venture, consortium, or other unincorporated grouping of two or more persons or organizations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices. Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the <i>Employer</i> or other people or organizations and including in circumstances where the <i>Contractor</i> or any such member is removed from an approved vendor data base of the <i>Employer</i> because of such practice.

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Z6	Confidentiality
Z6.1	The <i>Contractor</i> does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to Others in terms of clause 25.1, the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z6.2	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Project Manager</i> .
Z6.3	If the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> so that an appropriate protection order and/or any other action can be taken, if possible, prior to any disclosure. If such protective order is not, or cannot, be obtained, then the <i>Contractor</i> may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
Z6.4	The taking of images (whether photographs, video footage or otherwise) of the <i>works</i> or any portion thereof, while Providing the Works and after Completion, requires the prior written consent of the <i>Project Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z6.5	The <i>Contractor</i> ensures that all its subcontractors abide by the undertakings in this clause.
Z9	<i>Employer's limitation of liability</i>
Z9.1	The <i>Employer's</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The <i>Contractors</i> entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the <i>Employer's</i> liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.
Z10	<i>Employer's Step-in Rights and Additional Remedies</i>
Z10.1	In the event the <i>Contractor</i> and/or his subcontractor:
Z10.1.1	fails to carry out any obligation under the contract and the Works Information and fails to make good such failure and remedy it despite being requested to do so by the <i>Project Manager</i> in accordance with notices under Sub-Clause 16.1 (Early Warning) and/or Sub-Clause 13.1 (Communications), or

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Z10.1.2	commits a breach of the Contract which reasonably places the project at risk of non-completion by the Completion Date, or non-Completion; or
Z10.1.3	commits a material breach of contract,
	the <i>Employer</i> may, without prejudice to its other rights in clause 9 (Termination), powers and remedies under the contract or in law, be entitled to step-in and take over the <i>works</i> , and on the account of the <i>Contractor</i> and at the <i>Contractor's</i> risk, to (i) make good the failure and remedy it, or complete the <i>works</i> himself, or (ii) call upon other <i>Contractors</i> to make good the failure and remedy it or complete the <i>works</i> , or (iii) to call upon other <i>Contractors</i> to partner with the <i>Contractor</i> to make good the failure and remedy it, or complete the <i>works</i> . Further, notwithstanding anything contained in this contract, where the <i>Employer</i> has "stepped-in" the <i>Contractor</i> shall remain responsible as if the <i>works</i> were executed by the <i>Contractor</i> for the <i>works</i> up to the Completion Date.
Z10.2	The <i>Contractor</i> shall co-operate with the <i>Employer</i> and facilitate and permit the use of all required <i>Contractor's</i> Equipment, Goods, information, materials and other matter
	(including <i>Contractor's</i> Documents and all other drawings, CAD files, technical data, models, plans, designs, diagrams, evaluations, details, specifications, schedules, reports, calculation results, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the <i>Contractor</i> under the Contract or otherwise for and/or in connection with the <i>works</i>) and shall generally do all reasonable things required by the <i>Project Manager</i> to achieve this end; provided that where the foregoing constitute proprietary information, the <i>Contractor's</i> obligation hereunder shall be limited to furnishing <i>works</i> specific information in a form capable of being disclosed to third parties or providing assistance to third parties without requiring the <i>Contractor</i> to disclose non <i>works</i> -specific source codes or other proprietary information.
Z10.3	Any information, materials and other matter made available by the <i>Contractor</i> under this Sub-Clause Z.10 shall be used solely and exclusively for the purpose of making good and remedying the <i>Contractor's</i> failure and shall thereafter be returned to the <i>Contractor</i> . Any such information, materials and other matter which is made available by the <i>Employer</i> to other persons as contemplated in this Sub-Clause Z.13 shall be made available strictly in accordance with the foregoing and subject to a confidentiality undertaking.
Z11	Employer Procured Materials and Goods
Z11.1	The <i>Employer</i> is entitled but not obliged to procure materials and goods on behalf of the <i>Contractor</i> upon <i>Contractor's</i> request.
Z11.2	Should the <i>Employer</i> exercise this right, or should the <i>Employer</i> accept the <i>Contractor's</i> request, the <i>Contractor</i> shall:
Z11.2.1	issue to the <i>Project Manager</i> a list of all materials and goods the <i>Contractor</i> requires;
Z11.2.2	state in the list, the time within which such materials and goods must be provided;

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Z11.2.3	take delivery of such materials and goods provided by the <i>Employer</i> ;
Z11.2.4	the <i>Contractor</i> and Project Manager shall ensure that the correct quantity of material is delivered and confirmed as delivered to Site, respectively prior to payment.
Z11.3	The <i>Contractor</i> shall be responsible for and takes the risk on all materials and goods despite the <i>Employer</i> procuring such materials and goods. The <i>Contractor indemnifies and holds the Employer harmless</i> against all losses/damages and/or costs arising from any damage, loss or theft of such materials and goods.
Z11.5	The cost(s) of all materials and goods procured by the <i>Employer</i> on behalf of the <i>Contractor</i> in accordance with clause Z11 shall be deducted from the next payment certificate due to the <i>Contractor</i> .
Z11.6	The <i>Contractor</i> acknowledges that all <i>Employer</i> supplied materials and goods remain the property of the <i>Employer</i> .
Z12	Contractor Undertaking re CIDB and Tax Certificates
Z12.1	The <i>Contractor</i> shall ensure that all certificates, clearances and the like, including specifically any certificates required to be obtained by the <i>Contractor</i> for purposes of the contract in terms of the Construction Industry Development Board and the Value Added Tax Act, no 89 of 1991, remain in full force and effect up until the Completion Date.
Z12.2	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of the expiry of any requisite certificate may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. In addition to the <i>Employer's</i> right to terminate, should any requisite certificate that the <i>Contractor</i> is required to obtain expire or be null and void for any reason whatsoever, the <i>Employer</i> may withhold any payments due to the <i>Contractor</i> until such time as the <i>Contractor</i> provides the <i>Employer</i> and / or Project Manager with a valid and / or updated certificate.
Z13	RIGHT TO AUDIT
Z13.1	The <i>Employer</i> shall be entitled to, within 2 (two) Business Days of the giving of notice to the <i>Contractor</i> to such effect, conduct an audit of all relevant books, records, systems, processes, procedures and documents of the <i>Contractor</i> in order to verify compliance by the <i>Contractor</i> with its obligations in terms of this Contract and/or to assess any entitlement or claimed entitlement of the <i>Contractor</i> under this Contract or to investigate any allegations with regard to possible criminal activities or breach of IDT policies or procedures.
Z13.2	The <i>Contractor</i> shall co-operate and render all assistance requested by the <i>Employer</i> relating to such audit. In addition, the <i>Contractor</i> shall provide the <i>Employer</i> with access to all such books, records, systems, data, and documents of the <i>Contractor</i> that are relevant to this Contract, the <i>Contractor's</i> obligations under this Contract and/or any

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	entitlement or claimed entitlement of the <i>Contractor</i> under this Contract and to any premises, shareholders, partners, members, subcontractors, and Personnel of the <i>Contractor</i> for the purposes of conducting such audit. The Employer shall have the right to take copies of any records and information the Employer reasonably require assisting in connection with any such audit.
Z13.3	The <i>Contractor</i> shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with providing the Works and all matters related thereto (whether contained in documents or in electronic format) for the period of this Contract, and for a period of at least 5 (five) years after termination or completion of all the Works (as the case may be).
Z13.4	The <i>Contractor</i> shall ensure that the rights in this clause 18 also apply to any subcontractors and that the Employer be afforded the same auditing rights by the subcontractors.
Z13.5	The Employer shall keep all information obtained in terms of this clause 18 confidential and not disclose it to any third party. If the Employer is, at any time, required by law to disclose any such information which is required to be kept confidential, the Employer, to the extent permitted by law prior to disclosure, notifies the <i>Contractor</i> so that an appropriate protection order and/or any other action can be taken, if possible, prior to any disclosure. If such protective order is not, or cannot, be obtained, then the Employer may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
Z13.6	This contract between the parties comprises of the following documents: • The NEC 3 Engineering and Construction Contract, June 2005 (with amendments April 2013); Option A • Works Information • Pricing Data • Site Information • Contract Data • Offer and acceptance and any other document or part of a document referred to in any of the above-mentioned document, including annexures. The contract documents shall be deemed to be mutually explanatory of one another. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them, the <i>Contractor</i> Data shall prevail over all other contract documents.
Z14	Intellectual Property
Z14.1	Subject to each Party retaining title to its own Intellectual Property prior to the contract date, title to, copyright in and other Intellectual Property rights in any documents or other property created by the <i>Contractor</i> for or in connection with the Works vests in the Employer on creation and the <i>Contractor</i> hereby cedes and assigns all such rights to the

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	Employer with effect from the date of creation vesting such Intellectual Property in the Employer.
Z14.2	The Employer grants the <i>Contractor</i> a revocable license to use the Intellectual Property for the purposes of Providing the Works for the contract period.
Z14.3	Unless otherwise agreed by the Parties, the <i>Contractor</i> grants to the Employer a non-exclusive, perpetual, irrevocable, royalty free license to use any of the <i>Contractor's</i> Intellectual Rights, obtained prior to this contact, in connection with the Works and this contract.
Z14.4	All Intellectual Property created, enhanced or improvement arising from Providing the Works or from or in connection to the contract exclusively vests in the Employer.
Z14.5	If the Employer is prevented from receiving the Works or any part thereof because of any actual or alleged infringement of Intellectual Property rights, the <i>Contractor</i> must, at its cost, take all reasonable steps necessary to procure for the Employer the right to receive the Works or the relevant part thereof for its intended purpose.
Z14.6	Modification or replacement of the Works If the <i>Contractor</i> fails to procure the necessary rights in accordance with this clause within a reasonable time, the Employer may direct the <i>Contractor</i>, at the <i>Contractor's</i> cost, to promptly (i) amend the Works or the relevant part thereof to avoid the infringement of Intellectual Property rights; or (ii) replace the Works or the relevant part thereof with Works that do not infringe Intellectual Property rights.
Z 15	Suspension of work The <i>Contractor</i> shall, without prejudice to any of its rights in terms of the <i>Contract</i> or otherwise, be entitled to suspend performance of its obligations in terms of the <i>Contract</i> upon providing the Employer and <i>Project Manager</i> 7 (seven) calendar days' written notice should the Employer fail and/or neglect to make timeous payment pursuant to Clause 5 (Payment) of the <i>Contract</i>. It is agreed that the <i>Contractor</i> then be entitled to a compensation event pursuant to Clause 60.1(18) to account for the suspension by the <i>Contractor</i>.
Z16	Limitation of Project Manager's Authority In relation to the actions of the Project Manager as contemplated by those clauses listed hereunder the Employer has retained its authority, without any mandate to the Project Manager, and the Employer alone shall sign all documents Clauses 13.6, 14.3, 21.2, 30.2, 30.3, 51.1, 51.2, 51.3, 61.4, 65.1

Part two - Data provided by the Contractor.

[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)]

Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. If the option is not required select and delete the whole row.]

Notes to a tendering Contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)² to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 152 to 154 of the ECC3 Guidance Notes.
2. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise, complete by hand and in ink.
Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Statements given • The Contractor is in all contracts

Name.....

Address.....

- The direct fee percentage is.....
- The subcontracting fee percentage is.....
- The working areas are the Site and.....
- The key people are;

(1) Name.....

Job.....

Responsibilities.....

Qualifications.....

Experience

- The key people are;

(1) Name.....

Job.....

Responsibilities

Qualifications.....

Experience.....

- The key people are

(2) Name

Job.....

Responsibilities.....

Qualifications.....

Experience.....

- The key people are

(3) Name

Job.....

Responsibilities

Qualifications.....

Experience.....

C1.3 PERFORMANCE BOND

Pro-Forma NEC3 ECC Variable Performance Bond for Works and Maintenance - Demand Guarantee

To: Employer

Dear Sirs

Reference No. [•] *[Drafting Note: Guarantor/Bank reference number to be inserted]*

Performance Bond: *[Drafting Note: Name of Contractor to be inserted]*

Employer: Contract Reference - [•] *[Drafting Note: Contract reference number to be inserted]*

1. In this Guarantee:

1.1 the following words and expressions have the following meanings:

- 1.1.1 "Guarantor" - means [•], [•] Branch, (Registration No. [•]); *[Drafting Note: Name of Guarantor to be inserted]* [•] **Financial Services Board Registration number [•] NB: Guarantees submitted must be issued by either an insurance company duly registered in terms of the Short-Term Insurance Act, 1998 (Act 53 of 1998) or by a bank duly registered in terms of the Banks Act, 1990 (Act 94 of 1990) No alterations or amendments of the wording of the pro-forma will be accepted unless approved prior to it been issued by the Employer.**
- 1.1.1 "Guarantor's Address" - means [•]; *[Drafting Note: Guarantor's physical address to be inserted]*
- 1.1.2 "Contract" - means the written agreement entered into between Employer and the Contractor on or about [•] [•] 200[[^]] (Contract Reference No. [•]), as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: signature date and Contract reference number to be inserted]*
- 1.1.3 "Contractor" - means [•] a [•] registered in accordance with the laws of [•] with registration number [•]; *[Drafting Note: Name and details of Contractor to be inserted]*
- 1.1.4 "Employer" - means The Independent Development Trust, being a development finance institution reconstituted and incorporated as a juristic person in terms of schedule 2 of PFMA Act, 1 of 1999.
- 1.1.5 "Expiry Date" - means the date of issue of the Defects Certificate or such later date as may be determined by the application of clause 3.3;
- 1.1.6 "This Guarantee" - means this Performance Bond;
- 1.1.7 "Guaranteed Sum" - means the sum of [• - figure] ([• - words]) as reduced from time to time as provided for in paragraph 3 below; *[Drafting Note: Maximum aggregate Guarantee amount to be inserted not exceeding 10% of the contract sum]*
- "Project Manager" - means [•] a [•] registered in accordance with the laws of [•] with registration number [•]; and
- 1.1.9 a "recovery statement", an "interim payment certificate", a "Payment Certificate", a "Certificate(s) of Completion" or "Defect Certificate" shall mean any such certificate as issued by the Project Manager;

- 1.2. words and expressions defined in the Contract shall, unless otherwise defined in this Guarantee or otherwise required by the context of this Guarantee, have the same meanings in this Guarantee as those ascribed to them in the Contract, albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.
2. At the instance of the *Contractor*, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of Employer, as security for the proper performance by the *Contractor* of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to Employer, on written demand from Employer envisaged in paragraph 3 below and received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.
3. The Guarantor's liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:
 - 3.1 Maximum Guaranteed Sum (not exceeding 10% of the contract sum) in the amount of: **[• - amount in figures]**
[(• - amount in words)],
from and including the date of issue of this Guarantee and up to and including the Completion Date.
 - 3.2 Reducing the Guaranteed Sum (not exceeding 5.0% of the contract sum) in the amount of: **[• - amount in figures]**
[(• - amount in words)],
from and including the day after the Completion Date up to and including the date of the issue of the Defects Certificate.
 - 3.3 Reducing the Guaranteed Sum (not exceeding 0% of the contract sum) in the amount of: **R nil**
from and including the day after the date of the issue of the Defect Certificate, where after this Guarantee for Construction shall expire. Where the final payment certificate reflects payment due to the *Employer* this Guarantee shall expire upon payment of the full amount certified. The Guarantor's liability limits set out in paragraphs 3.1 to 3.3 shall apply in respect of any claim received by the Guarantor during the Security validity.
4. A demand for payment under this Guarantee shall be made in writing at the Guarantor's address and shall:
 - 4.1 confirm the "Guaranteed Sum" at the time of the demand;
 - 4.2 state the amount claimed ("the Demand Amount"); and
 - 4.3 state that the Demand Amount is payable to Employer in the circumstances contemplated in the Contract:
 - 4.3.1. in regard to sums certified, shall state the Demand Amount to be the amount so certified and shall:
 - 4.3.1.1 state that such first written demand notice issued by Employer to the Guarantor at the Guarantor's Address, with a copy to the *Contractor*, records that a period of seven (7) calendar days has elapsed since the issue of the first written demand notice in terms of paragraph 4.3.1.2 and that the sum certified has not been paid to date. Employer herewith calls up this Guarantee and demands payment of the sum certified from the Guarantor;
 - 4.3.1.2 be accompanied by a copy of a preceding first written demand notice issued by Employer to the *Contractor* stating that payment of a sum certified by the Project Manager in an interim or final payment certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, Employer intends to call upon the Guarantor to make payment in terms of paragraph 4.3.1.1;

4.3.1.3. and

4.3.1.4 shall be accompanied by a copy of the applicable payment certificate which entitles Employer to receive payment in terms of the Contract of the sum certified;

4.3.2. where the Demand Amount is for the Guaranteed Sum or the full outstanding balance thereof, Employer shall deliver a first written demand notice to the Guarantor at the Guarantor's Address calling up this Guarantee stating that:

4.3.2.1 the Contract has been terminated due to the *Contractor's* default and that the Guarantee is called up in terms of this sub-paragraph. This demand shall enclose a copy of the notice of termination; or

4.3.2.2 a provisional sequestration or liquidation court order has been granted against the *Contractor* and that the Guarantee is called up in terms of this sub-paragraph. The demand notice shall enclose a copy of the court order.

5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:

5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor's obligation/s to make payment:

5.1.1 is and shall be absolute and unconditional in all circumstances; and

5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;

6. Employer shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting the Guarantor's liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.

7. Should Employer cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then Employer shall be entitled to cede to such third party the rights of Employer under this Guarantee on written notification to the Guarantor of such cession

8. The Guarantor's obligations in terms of this Guarantee:

8.1. shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

8.2. shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between Employer and the *Contractor*

9. This Guarantee:

9.1. shall expire on the Expiry Date until which time it is irrevocable;

9.2. is, save as provided for in 7 above, personal to Employer and is neither negotiable nor transferable;

9.3. shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

9.4. shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to Employer and, secondly, obtaining any court order; and

9.5. shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

10. The Guarantor chooses the domicilium citandi et executandi for all purposes in connection with this Guarantee at the Guarantor's Address.

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Signed at _____

Date _____

For and on behalf of the Guarantor

Guarantor Signatory 1: _____

Guarantor Signatory 2: _____

Capacity of Guarantor Capacity of Guarantor Signatory 1: _____

Signatory 2: _____

Printed Name of witness: _____

Printed Name of Witness: _____

Guarantor's seal or stamp

PART 2: PRICING DATA

NEC 3 Engineering and Construction Contract Option A: Priced Contract with *Activity Schedule* of April 2013 (including amendments).

C2.1 PRICING ASSUMPTIONS: OPTION A

1 How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option A states:

Identified and 11 defined terms **11.2 (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.**

(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not excluding the cost of preparing quotations for compensation events.

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group.

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering *Contractor* as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment.

1. Function of the Activity Schedule

Clause 54.1 in Option A states: "Information in the Activity Schedule is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Activity Schedule but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. **The Activity Schedule is only a pricing document.**

2. Link to the programme

Clause 31.4 states that "The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". **Ideally the tendering *Contractor* will develop a high-level programme first then resource each activity and thus arrive at the lump sum price for that activity both of which can be entered into the activity schedule.**

3. Preparing the activity schedule

Generally, it is the tendering *Contractor* who prepares the *activity schedule* by breaking down the work described within the Works Information into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in his activity schedule and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Contractor*:

Has taken account of the guidance given in the ECC3 Guidance Notes pages 19 and 20; Understands the function of the Activity Schedule and how work is priced and paid for;

- iii. Is aware of the need to link the Activity Schedule to activities shown on his programme;
- iv. Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk
- v. Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.
- vi. Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

C2.2 PRICING INSTRUCTIONS

1. The Activity Schedule to be priced is to be drawn up by the *Contractor*.
2. The agreement is based on the NEC3 suite of documents, Option A. The additions, deletions and alterations to the NEC3 document as well as the contract specific variables are as stated in the Contract Data.
3. Preliminaries requirements are based on the various parts of SANS 1921, Construction and management requirements for works contracts. The additions, deletions and alterations to the various parts of SANS 1921 as well as the contract specific variables are as stated in the Specification Data in the Scope of Work.
4. It will be assumed that prices included in the Schedule of Activities (if any), are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published 28 days before the closing date for tenders. (Refer to www.stanza.org.za or www.iso.org for information on standards).
5. The *Contractor* is required to make designs for the works. The *Contractor* will assume responsibility for design for suitability for purpose for the portion of the works which he has designed.
6. Reference to any particular trademark, name, patent, design, type, specific origin or producer is purely to establish a standard for requirements. Products or articles of an equivalent standard may be substituted.
7. The Schedule of Activities is not intended for the ordering of materials. Any ordering of materials, based on the Schedule of Activities, is at the *Contractor's* risk.
8. Activity Schedule and pricing to be submitted should be at a detailed level.
9. No variations will be considered for any omissions by the tenderer.
10. The contract price shall remain fixed for the duration of the contract and will not change with any fluctuations in foreign exchange and CPAP.

C3: SCOPE OF WORK

Included in the Outdoor Generator Specification Supply, delivery, installation and commissioning of the complete outdoor emergency generator inside and sound proof canopy/container set on a concrete plinth as specified in this document.

The successful tenderer shall supply, deliver and install a complete single enclosed diesel driven standby generator set in a position that will be determined on site. The machine shall be totally enclosed in a 3CR12 stainless steel housing for coastal areas and any canopy for in-land areas. The exhaust shall be manufactured from stainless steel.

The housing is to be provided on galvanized 3CR12 stainless steel skids so that the generator set can be transported to site and placed in position on a concrete plinth, casted by the successful tenderer. The skids must be of sufficient height to allow for the passage of storm water under the set.

The Contractor shall provide professional Services of the Following disciplines

- A. Structural Engineers
- B. Electrical Engineers