



KWAZULU-NATAL PROVINCE
AGRICULTURE AND RURAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

INVITATION OF QUOTATION

THIS FORM SHOULD BE COMPLETED IN DETAIL AND SHOULD BE ACCOMPANIED BY VALID TAX COMPLIANCE STATUS PIN /CSD NUMBER

| | |
|---|--|
| QUOTATION NUMBER: R/N/2223/67 | VALIDITY PERIOD OF QUOTATION..... Days (To be completed by the Supplier) |
| CLOSING DATE: 20/05/2022 | CLOSING TIME: 11:00 |
| DESCRIPTION(SPECIFICATION/S) OF ITEMS/ SERVICE REQUIRED DE BUSHING AT NDUMO A SEE SPEC ATTACHED. COMPULSORY BRIEFING DATE :11/05/2022 TIME: 10:00AM VENUE: NDUMO VILLAGE AT LIBRARY | COMPANY NAME: TEL NO: FAX NO: CONTACT PERSON: CSD :MAAA..... |
| DOES OFFER COMPLY WITH SPECIFICATION? | YES/NO (DELETE WHICH EVER IS NOT APPLICABLE) |
| DOES ARTICLE COMPLY WITH SABS SPECIFICATION? HAS IT BEEN INSPECTED BY SABS? | YES/NO YES/NO (DELETE WHICH EVER IS NOT APPLICABLE) |
| DELIVERY PERIOD AFTER INITIAL ORDER? | |
| IS THE PRICE FIRM | |
| WHERE ARE THE STOCK HELD? (PHYSICAL ADDRESS , PLEASE) | |
| QUOTATION PRICE INCLUDING VAT (VAT TO BE ADDED BY REGISTERED VAT VENDORS ONLY) | TOTAL: R |
| COMPANY OFFICIAL STAMP (COMPULSORY) | SIGNATURE OF BIDDER DATE |
| Quotation to be returned to: HEAD OFFICE 1 CEDARA ROAD PIETERMARITZBURG TENDER BOX AT scm cedara head office Department of agriculture and rural development TELL: 033 343 8111 | |
| NB: DOCUMENT MUST BE COMPLETED IN FULL THIS QUOTATION COVER PAGE MUST BE COMPLETED AND RETURNED WITH ALL YOUR SUPPORTING DOCUMENTS. | |

ANNEXURE A

COMPANY NAME : _____
 ADDRESS : _____
 CONTACT PERSON : _____
 CONTACT NUMBER : _____

| LINE NO. | DESCRIPTION OR SPECIFICATION OF ITEM (Please be very specific and clear) | REQUIRED QUANTITY | UNIT PRICE EXCL. VAT | | TOTAL PRICE | |
|---|---|-------------------|----------------------|---|-------------|---|
| | | | R | C | R | C |
| 1. | De bushing at Nduma A (as per Appendix 1) | 01 | | | | |
| * LABOUR (IF APPLICABLE) | | | | | | |
| *DELIVERY (IF APPLICABLE) | | | | | | |
| TOTAL | | | | | | |
| *ONLY APPLICABLE TO VAT REGISTERED SUPPLIERS 15% VAT | | | | | | |
| TOTAL PRICE | | | | | | |
| CIDB Grading (if applicable) | | | | | | |

For Enquiry only

END-USER NAME : Mzukisi Ngejane
 TELEPHONE NUMBER : 064 465 6257
 E-MAIL ADDRESS : Mzukisi.Ngejane@kzndard.gov.za

PROPOSED DELIVERY DATE : 01/06/2022
 DELIVERY ADDRESS : Ndumo A
 LOCAL MUNICIPALITY : Jozini Municipality
 DISTRICT : Umkhanyakude District

*VAT Registration No. (Supplier) -----

COMPANY STAMP

PRICES ARE VALID FOR

Mark one Box (X)

30 60 90 DAYS

SIGNATURE.....

DATE.....

PART A INVITATION TO BID

| | | | | | |
|---|--|---------------------------------|--|---|----------------|
| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY) | | | | | |
| BID NUMBER: | R/S/2223/67 | CLOSING DATE: 20/05/2022 | | CLOSING TIME: | 11:00AM |
| DESCRIPTION | DE BUSHING AT NDUMO | | | | |
| BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS) | | | | | |
| HEAD OFFICE 1 CEDARA ROAD | | | | | |
| PIETERMARITZBURG | | | | | |
| TENDER BOX AT scm cedara head office Department of agriculture and rural development | | | | | |
| BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO | | | TECHNICAL ENQUIRIES MAY BE DIRECTED TO: | | |
| CONTACT PERSON | S MCHUNU | | CONTACT PERSON | M NGEJANE | |
| TELEPHONE NUMBER | 033 343 8111 | | TELEPHONE NUMBER | 064 465 6257 | |
| FACSIMILE NUMBER | | | FACSIMILE NUMBER | | |
| E-MAIL ADDRESS | Sandile.mchunu@kzndard.gov.za | | E-MAIL ADDRESS | Mzukisi.ngejane2kzndard.gov.za | |
| SUPPLIER INFORMATION | | | | | |
| NAME OF BIDDER | | | | | |
| POSTAL ADDRESS | | | | | |
| STREET ADDRESS | | | | | |
| TELEPHONE NUMBER | CODE | | NUMBER | | |
| CELLPHONE NUMBER | | | | | |
| FACSIMILE NUMBER | CODE | | NUMBER | | |
| E-MAIL ADDRESS | | | | | |
| VAT REGISTRATION NUMBER | | | | | |
| SUPPLIER COMPLIANCE STATUS | TAX COMPLIANCE SYSTEM PIN: | | OR | CENTRAL SUPPLIER DATABASE No: | MAAA |
| ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF] | | ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW] | |
| QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS | | | | | |
| IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| DOES THE ENTITY HAVE A BRANCH IN THE RSA? | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW. | | | | | |

**PART B
TERMS AND CONDITIONS FOR BIDDING**

| |
|--|
| 1. BID SUBMISSION: |
| 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. |
| 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT. |
| 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. |
| 1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7). |
| 2. TAX COMPLIANCE REQUIREMENTS |
| 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. |
| 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS. |
| 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA. |
| 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID. |
| 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER. |
| 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED. |
| 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE." |

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

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

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

| Full Name | Identity Number | Name of State institution |
|-----------|-----------------|---------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:
.....
.....

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

2.3.1 If so, furnish particulars:
.....
.....

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

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

| | |
|--------------------|----------------------|
| Signature | Date |
| Position | Name of bid |

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

CONTRACT FORM - PURCHASE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to (name of institution)..... in accordance with the requirements and specifications stipulated in bid number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Technical Specification(s);
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

| | |
|------------------|-------|
| WITNESSES | |
| 1 | |
| 2. | |
| --- | --- |

CONTRACT FORM - PURCHASE OF GOODS/WORKS

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as..... accept your bid under reference numberdated.....for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

| ITEM NO. | PRICE (ALL APPLICABLE TAXES INCLUDED) | BRAND | DELIVERY PERIOD | B-BBEE STATUS LEVEL OF CONTRIBUTION | MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable) |
|----------|---------------------------------------|-------|-----------------|-------------------------------------|--|
| | | | | | |

4. I confirm that I am duly authorised to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1.

2.

DATE

Quotation No: R/S/2223/67

DE BUSHING AT NDUMO A

THIS IS TO CERTIFY THAT (NAME):

ON BEHALF OF:

ATTENDED THE COMPULSORY BRIEFING SESSION
ON.....(DATE)

AND IS THEREFORE FAMILIAR WITH THE CIRCUMSTANCES AND THE SCOPE OF
THE SERVICE TO BE RENDERED.

.....
NAME AND SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE

DATE:.....

.....
NAME AND SIGNATURE OF DEPARTMENTAL REPRESENTATIVE

DATE:

DEPARTMENTAL OFFICIAL STAMP:

Terms of Reference/ Specifications

**APPOINTMENT OF A SERVICE PROVIDER FOR THE FOR THE BUSH CLEARING AND
LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-, JOZINI LM,
UMKHANYAKUDE DM**

A | TERMS OF REFERENCE

1. INTRODUCTION

- 1.1. The Department of Agriculture and Rural Development sought a project of bush clearing and land preparation at Ndumo A Irrigation Scheme. The purpose of the project is to assist farmers at Ndumo A with utilizing their land for production purposes.

2. SCOPE OF WORKS

- 2.1 The project covers:
- 2.1.1. Site establishment and complying with Health and Safety Standards.
 - 2.1.2. Supply and delivery of all materials and machinery listed in the Bill of Quantities to the project site.
 - 2.1.3. Appointment of an Environmental Specialist to assist with identification and demarcation of protected trees.
 - 2.1.4. Site clearance and de-bushing as instructed by the responsible person.
 - 2.1.5. Where required, rehabilitation of entrance and internal roads as instructed by the responsible person.
 - 2.1.6. Where required, deal with obstruction of existing pipelines.
 - 2.1.7. Contractor to compile weekly progress reports to the project responsible person, detailing the actual work completed, and verified against the updated approved programme of work.
- 2.2 Documents to accompany this bid specification are listed in the Table of Contents.

3. PROJECT LOCATION

- 3.1. The site is situated at Ndumo, at **70 km NE** of Jozini Town.
- 3.2. Site Coordinates [in decimal degrees]: 27.77S . 32.31E.

See APPENDIX Locality Map in Appendix 6



BID DOCUMENT FOR THE APPOINTMENT OF A SERVICE PROVIDER FOR THE BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME AT JOZINI LOCAL MUNICIPALITY] LM | UMKHANYAKUDE DISTRICT MUNICIPALITY DM

APRIL 2022

| TABLE OF CONTENTS PROJECT TECHNICAL SECTION | | | |
|--|--|--------------|----------------------------|
| No. | Section | Pages | Returnable section? |
| 1 | Table of Contents | 1 | NO |
| 2 | Terms of Reference | 2 | NO |
| 3 | A SAICE General Conditions of Contract as amended | 3 | NO |
| 4 | B Special Conditions of Contract/ | 40 | NO |
| 5 | C Standard Technical Specifications for building works | 50 | NO |
| 7 | LIST OF APPENDICES | 51 | NO |
| 9 | APPENDIX 1: PRICING DATA | 52 | |
| | 2.1 Summary of Sections | 52 | YES |
| | 2.2 Summary of Schedules | 53 | YES |
| | 2.3 Bill of Quantities | 54 | YES |
| 8 | APPENDIX 2: CONTRACT DATA | 61 | YES |
| 10 | APPENDIX 3: Experience & expertise | 64 | YES |
| 11 | APPENDIX 4: Subcontractors | 65 | YES |
| 12 | APPENDIX 5: Contractor's Health & Safety Declaration | 66 | YES |
| 13 | APPENDIX 6: Locality map & Site Plan | 68 | NO |
| | | | |

APPOINTMENT OF A SERVICE PROVIDER FOR THE FOR THE BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-, JOZINI LM, UMKHANYAKUDE DM

B | GENERAL CONDITIONS OF CONTRACT AS PER GCC 2015

The SAICE General Conditions of Contract (GCC third version of 2015) apply in this construction contract. Text sections below that are *in italics* are amendments to the standard GCC 2015 clauses and effectively constitute Special Conditions for this Contract. Headers with an **asterisk** before and after them are of clauses that have been removed. Underlined double asterisks ****** indicate that text was removed. Additional Special Conditions can be found in the C section, Special Terms and Conditions. Where an issue is covered by both the GCC and the STC, the latter will hold precedent over the former.

1. GENERAL

1.1 Definitions

- 1.1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:
- 1.1.1.1 **Agreed** means agreed by the Employer and the Contractor, unless specifically stated otherwise
- 1.1.1.2 **Bill of Quantities** means the document so designated in the Pricing Data, if any.
- 1.1.1.3 **Certificate of Completion** means the certificate issued by the Employer's Agent stating the date on which completion was achieved.
- 1.1.1.4 **Certificate of Practical Completion** means the certificate issued by the Employer's Agent stating the date on which Practical Completion was achieved.
- 1.1.1.5 **Commencement Date of the contract** means the date that the Agreement, made in terms of the Form of Offer and Acceptance, comes into effect, *which will in most cases be the date of the signing of the SLA by the Contractor.*
- 1.1.1.6 **Construction Equipment** means all appliances or things of whatsoever nature required for carrying out, completing or correcting defects in the Works, but does not include materials, Plant or other things that are part of, or intended to form part of the Permanent Works.
- 1.1.1.7 **Contract** means the documentation of the agreement between the parties in terms of the Form of Offer and Acceptance, and such written amendments or additions to the Contract as may be agreed to between the parties.
- 1.1.1.8 **Contract Data** means the document that sets out the 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.
- 1.1.1.9 **Contractor** means the person named in the Contract Data whose offer has been accepted in the Form of Offer and Acceptance and the legal successors in title of this person.
- 1.1.1.10 **Contract Price** means the Contract Sum subject to such addition thereto or deduction therefrom as may be made from time to time under the provisions of the Contract. Commencement Date of the Contract
- 1.1.1.11 **Contract Sum** means the accepted amount provided for in the agreement made in terms of the Form of Offer and Acceptance.
- 1.1.1.12 **Day** shall mean a calendar day.
- 1.1.1.13 **Defects Liability Period** means the period stated in the Contract Data, if any commencing from the issue of the Certificate of Completion or Certificates of Completion in the event of more than one Certificate of Completion having been issued for different parts of the Works, during which the Contractor has both the right and the obligation to make good defects in the materials, Plant and workmanship covered by the Contract.

1.2.1 Delivery of Notices

- 1.2.1 Any written communication between the parties shall have been duly delivered if:
- 1.2.1.1 Handed to the addressee or to his duly authorised agent, or
 - 1.2.1.2 Delivered at the address of the addressee as stated in the Contract Data; provided that the Employer, Employer's Agent and Contractor shall be entitled, by written notice to each other, to change their said addresses.

1.2.2 Extent of indemnification

- 1.2.2 .1 In respect of any indemnification against liability to third parties given by either party to the other, the proceedings, damages, costs, charges and expenses in relation thereto or arising therefrom.

1.2.3 Authority of representatives

- 1.2.3 The common or statute law shall determine whether any person acting or purporting to act on behalf of the Employer, Employer's Agent or Contractor is duly authorised, save to the extent that a party shall, by written notice to each of the others, designate a person or the holder of any office, to the exclusion of another person or holder of office, to have such authority, or to limit in any way, or terminate the authority of such designated person or holder of office.

1.2.4. Singular and plural, masculine and feminine, marginal notes

- 1.2.4 Where the context requires:
- 1.2.4.1 Words importing the singular also include the plural and vice versa,
 - 1.2.4.2 Words importing the masculine gender also include the feminine and the neuter.
- 1.2.5 The marginal notes or headings in these General Conditions shall not form part of the Contract.

1.3 General provisions

1.3.1 Concessions not to constitute a waiver

- 1.3.1 No grant by the Employer or the Contractor to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.

1.3.2 Governing law

- 1.3.2 The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of the Republic of South Africa, unless otherwise stated in the Contract Data.

1.3.3 Language

- 1.3.3 The language of the Contract and of written communications shall be English, unless otherwise stated in the Contract Data.

1.3.4 Supplementary Agreement

- 1.3.4 In the event that the Contractor and the Employer conclude a Supplementary Agreement, the additional shall not be taken to be a variation or addition under Clause 6.3, but to be a separate contract. The value of Clause 6.11, not be taken into account for this Contract, but it shall be taken into account for the separate supplementary agreement.

1.3.5 Contractor's copyright

- 1.3.5 Except where otherwise stated in the Contract, the Contractor shall retain the copyright and other intellectual property rights in documents supplied to the Employer or Employer's Agent under the Contract. The Contractor shall legally be deemed to have given the Employer a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Contractor's documents, including making and using modifications of such documents for the purposes of further work required to the Works.

1.3.6 Employer's copyright

- 1.3.6 Except where otherwise stated in the Contract, the Employer shall retain the copyright and other intellectual property rights in documents supplied to the Contractor under the Contract.

- 1.1.1.14 **Due Completion Date** means the date of expiry of the time stated in the Contract Data for achieving Practical Completion of the Works, calculated from the Commencement Date and as adjusted by such extensions of time or acceleration as may be allowed in terms of Contract.
- 1.1.1.15 **Employer** means the person for whom the Works are to be carried out and who is named as the Employer in the Contract Data, and the legal successors in title of this person.
- 1.1.1.16 **Employer's Agent** means the person named as the Employer's Agent in the Contract Data or any other person appointed from time to time by the Employer and of whom the Contractor is notified, in writing, to act as Employer's Agent for the purposes of the Contract as substitute for the Employer's Agent so named.
- 1.1.1.17 **Employer's Agent's Representative** means the natural person appointed from time to time by the Employer's Agent in terms of the Contract.
- 1.1.1.18 **Final Approval Certificate** means the certificate issued by the Employer's Agent stating the date on which the Works were completed and all defects corrected in accordance with the Contract.
- 1.1.1.19 **Fixed Price Contract** means the Contractor is paid the Contract Sum for carrying out the Works subject to adjustments in accordance with the Contract.
- 1.1.1.20 **Form of Offer and Acceptance** means the document that formalises the legal process of offer and acceptance and gives rise to the Contract.
- 1.1.1.21 **General Items** means items stipulated in the Pricing Data relating to general obligations, site services, facilities, and/or items that cover elements of the cost of the work which are not considered as proportional to the costs of the Permanent Works.
- 1.1.1.22 **Permanent Works** means the permanent works to be designed (if required) constructed and/or provided in accordance with the Contract.
- 1.1.1.23 **Plant** means machinery, apparatus, articles and things of all kind that become part of the Permanent Works to be provided in accordance with the Contract.
- 1.1.1.24 **Practical Completion** means that the whole or portion of the Works has reached a state of readiness, fit for the intended purpose, and occupation without danger or undue inconvenience to the Employer, even though some work may be outstanding.
- 1.1.1.25 **Pricing Data** means the document that sets out the Pricing Strategy and provides the criteria and assumptions which it will be assumed in the Contract were taken into account by the Contractor when developing the Contract Sum.
- 1.1.1.26 **Pricing Strategy** means the strategy stated in the Contract Data which is adopted to secure prices and to remunerate the Contractor in terms of the Contract.
- 1.1.1.27 **Re-measurement Contract** means the Contractor is paid an amount determined from the actual quantities of work completed multiplied by the rates or prices for such work subject to adjustments in accordance with the Contract. *By default, the Department's contract are not re-measurement contracts, but lumpsum contracts, unless it is explicitly mentioned in the Contract Data.*
- 1.1.1.28 **Scope of Work** means the document that specifies and describes the Works which are to be provided, and any other requirements and constraints relating to the manner in which the work is to be carried out.
- 1.1.1.29 **Site** means the land and other places made available by the Employer, for the purposes of the Contract, on, under, over, in or through which the Works are to be carried out.
- 1.1.1.30 **Site Information** means the document that describes the Site as at the time of tender to enable the tenderer to price the tender and to decide upon the method of work and the programme.
- 1.1.1.31 **Supplementary Agreement** means an additional contract between the Employer and the Contractor for carrying out work, supplemental to the original Contract, which does not meet the requirements to be carried out by a Variation Order in terms of Clause 6.3.1.
- 1.1.1.32 **Temporary Works** means the temporary works required for or in connection with carrying out the Permanent Works and shall include items which are not intended to be permanent or to form part of the Permanent Works.
- 1.1.1.33 **Works** means the Permanent Works together with such Temporary Works as may be necessary for carrying out the Works.
- 1.1.1.34 **Writing** means any hand-written typed or printed communication (comprising words, figures or drawings) including facsimiles, electronic communication or any similar communication resulting in a permanent record. "In writing" and "written" shall have corresponding meanings.

1.2 Interpretations

2. BASIS OF CONTRACT

2.1 Available data and information

2.1.1 Available data

2.1.1 The Employer shall have made available to the Contractor, as part of or by reference in the Site Information, data relevant to the Works obtained by or on behalf of the Employer, but the Contractor shall be responsible for his own interpretation thereof and deductions therefrom.

2.1.2 Inspection of the site

2.1.2 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have studied all available information pertaining thereto before submitting his tender (as far as is practicable). The Contractor shall thus be considered knowledgeable in respect of:

2.1.2.1 The form and nature of the Site and its surroundings.

2.1.2.2 Environmental, hydrological and climatic conditions.

2.1.2.3 The extent and nature of the work and materials required for carrying out and completion of the Works.

2.1.2.4 The means of access to the Site and the accommodation he may require.

2.1.2.5 The design of the Works and site conditions insofar as they affect carrying out the Works with regard to health, safety and the environment.

2.1.3 Obtaining information

2.1.3 The Contractor shall, in general, be deemed to have obtained all available information on risks, contingencies and all other circumstances which may influence or affect the Works (as far as is practicable).

2.2 Adverse physical conditions

2.2.1 Adverse physical conditions

2.2.1 If, while carrying out the Works, the Contractor shall encounter adverse physical conditions (other than weather conditions at the Site or the direct consequences of those particular weather conditions) or artificial obstructions, which conditions or obstructions could not have been reasonably foreseen by an experienced contractor at the time of submitting his tender, and the Contractor is of the opinion that additional work will be necessary which would not have been necessary if the particular physical conditions or artificial obstructions had not been encountered, he shall give notice to the Employer's Agent in writing as soon as he becomes aware of the conditions or obstructions aforesaid, stating:

2.2.1.1 The nature and extent of the physical conditions and artificial obstructions encountered, and

2.2.1.2 The additional work required by reason thereof.

2.2.1.3 *An estimate of the costs of the additional work, if possible on the basis of his rates as per the Pricing data and/or quotes from suppliers. The costs shall not exceed the balance of the Contingencies allocation for the project, unless permission for a Variation Order has been granted before the additional work has been approved. The Employer's Agent will subsequently take a decision whether the additional work will be warranted, and will communicate that decision to the Contractor.*

2.2.2 Further notices

2.2.2 Should additional or more extensive adverse physical conditions or artificial obstructions within the meaning of Clause 2.2.1 be encountered by the Contractor, he shall give further notices thereof in terms of Clause 2.2.1.

2.2.3 Contractor to carry out additional work

2.2.3 After being given approval by the Employer's Agent, the Contractor shall carry out the additional work proposed in the notice or notices under Clauses 2.2.1 and 2.2.2 without limiting the right of the Employer's Agent to order a suspension of work in terms of Clause 5.11.2 or a variation in terms of Clause 6.3.

The Employer shall legally be deemed to have given the Contractor a nonterminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Employer's documents for the purposes of the Contract.

2.2.4 Contractor's right to claim

- 2.2.4.1 If the Contractor has duly given the notice referred to in either Clauses 2.2.1 or 2.2.2, he shall be entitled, in respect of the delay to Practical Completion and/or to proven additional cost, to make a claim in accordance with Clause 10.1, provided that the (1) cost and (2) time of all work done by the Contractor **prior to** giving the notice or notices in terms of Clauses 2.2.1 and 2.2.2 shall be regarded as (1) covered by the rates and/or prices as set out in the Pricing Data and (2) the time stated in the Contract Data relating to Clause 1.1.1.14.
- 2.2.4.2 *In addition, the total of the additional works should not exceed the balance of the Contingencies or, if applicable, the approved Variation Order amount.*

2.3 Technical data

2.3.1 Technical data

- 2.3.1 The Contractor shall legally be deemed to have based his tender on the technical data provided in the Contract. If, in the performance of the Contract, any circumstances shall differ from the said technical data that delay Practical Completion and/or brings about proven additional cost, the Contractor *can, in consultation with the Employer's Agent*, make a claim in accordance with Clause 10.1.2

2.4 Ambiguity or discrepancy

2.4.1 Ambiguity and discrepancy

- 2.4.1 If an ambiguity in or discrepancy between the documents is found, *the Contractor shall bring this to the attention of the Employer's Agent, who shall provide the necessary clarification or instruction.*

2.4.2 Additional cost due to ambiguity

- 2.4.2 If compliance with any such instruction shall result in delay to Practical Completion and/or the incurrence of proven additional cost the Contractor *can, in consultation with the Employer's Agent*, make a claim in accordance with Clause 10.1.

2.5 Assignment

2.5.1 Assignment

- 2.5.1 Neither the Contractor nor the Employer shall, without the written consent of the other, assign the Contract or any part thereof, or any obligation under the Contract, or cede any right or benefit thereunder.

3. EMPLOYER'S AGENT

3.1.1 Professional background of Employer's Agent

- 3.1.1 The natural person acting, or purporting to act, as the Employer's Agent shall be *an Engineering professional in the Agricultural and/or Civil Engineering field that is appropriate for the Scope of Work.*

3.2.1 Functions of the Employer's Agent

- 3.2.1 The function of the Employer's Agent is to administer the Contract as agent of the Employer, in accordance with the provisions of the Contract.

3.2.2 Employer's Agent to consult with the Contractor and Employer

- 3.2. Whenever the Employer's Agent intends, in terms of the Contract, to exercise any discretion or make or issue any ruling, contract interpretation or price determination, he shall first consult with the Contractor and the Employer in an attempt to reach agreement. Failing agreement, the Employer's Agent shall act impartially and make a decision in accordance with the Contract, taking into account all relevant facts and circumstances.

3.2.3 *Specific approval of the Employer required*

3.2.4 Employer's agent for health and safety

3.2.4 The Employer may, by written notice to the Contractor and the Employer's Agent, authorise an agent to act as his representative relating to responsibilities imposed by the Occupational Health and Safety Act on the Employer. Such an agent, if not the Employer's Agent, shall be responsible to the Employer's Agent in terms of these Conditions of Contract.

3.3 Employer's Agent's Representative

3.3.1 Nomination Employer's Agent's Representative

3.3.1 The Employer's Agent shall be entitled, *but not without giving prior notice* to the Contractor, to appoint a person as Employer's Agent's Representative and shall have the power *once again, not without notifying the Contractor*, from time to time to terminate or change such appointment.

3.3.2 Authority of Employer's Agent's Representative

3.3.2 The Employer's Agent's Representative shall:

3.3.2.1 Observe how the Works are carried out, examine and test materials and workmanship, and receive from the Contractor such information as he shall reasonably require.

3.3.2.2 Have the authority:

3.3.2.2.1 Assigned to him by any provisions of the Contract,

3.3.2.2.2 Assigned to him by the Employer's Agent in terms of Clause 3.3.4,

3.3.2.2.3 To deliver to the Contractor oral or written communications from the Employer's Agent, and

3.3.2.2.4 To receive, on behalf of the Employer's Agent, oral or written communications from the Contractor.

3.3.3 Limitations of the authority of Employer's Agent's Representative

3.3.3 ****** The powers and authority of the Employer's Agent's Representative shall be subject to the following conditions:

3.3.3.1 He shall have no authority to relieve the Contractor of any of his obligations under the Contract and, unless he is authorised thereto in terms of Clause 3.3.4, he shall have no authority to order any work involving delay or any additional payment by the Employer, or to affect any variation of or in the Works;

3.3.3.2 Failure by the Employer's Agent's Representative to disapprove of any work, workmanship or materials shall not prejudice the power of the Employer's Agent thereafter to disapprove thereof and exercise any of his powers in terms of the Contract in respect thereof.

3.3.4 *Employer's Agent's authority to delegate*

3.3.5 *Limitation of delegation*

3.3.6 Contractor's right to refer to Employer's Agent

3.3.6 If the Contractor is dissatisfied with any order or instruction of the Employer's Agent's Representative, or any other person appointed by the Employer's Agent to act on his behalf, he shall be entitled to refer the matter to the Employer's Agent who shall promptly confirm, reverse or vary such order or instruction.

4. CONTRACTOR'S GENERAL OBLIGATIONS

4.1 Extent of obligations and liability

4.1.1 Extent of Contractor's obligations

4.1.1 The Contractor shall, save insofar as it is legally or physically impossible, design (to the extent provided in the Contract), carry out and complete the Works and remedy any defects therein in accordance with the provisions of the Contract.

4.1.2 Contractor's liability for own design errors

4.1.2 Where the Contract expressly provides that the Permanent Works, or part of the Permanent Works shall be designed by the Contractor, he shall, notwithstanding approval by the Employer's

Agent, be liable for any error or deficiency in any drawing or document supplied by him for that part of the Works, and for any loss or damage arising out of such error or deficiency.

4.2 Employer's Agent's instructions

4.2.1 Works to comply with Employer's Agent's instructions

4.2.1 The Contractor shall, in carrying out his aforesaid obligations, comply with the Employer's Agent's instructions on all matters relating to the Works.

4.2.2 Instructions from Employer's Agent only

4.2.2.1 The Contractor shall only take instructions only from the Employer's Agent, the Employer's Agent's Representative or a person duly authorised by the Employer's Agent's in terms of Clause 3.3.4.

4.2.2.2 *No instructions should be taken from the beneficiaries themselves without these being approved by the Employer's Agent. Should the Employer's Agent find that works were executed or items were purchased on instruction of other persons than the ones listed under 4.2.2.1, that he could not approve of, he is entitled to instruct the contractor to correct the disputed works at his own costs.*

4.3 Legal provisions

4.3.1 Compliance with applicable laws

4.3.1 The Contractor shall, in fulfilling the Contract, comply with all applicable laws, regulations, statutory provisions and agreements, and shall, at the request of the Employer's Agent, provide proof that he has complied therewith.

4.3.2 Proof of good standing

4.3.2 If required, the Contractor shall provide proof to the Employer's Agent that the Contractor is in good standing with respect to duties, taxes, levies and contributions required in terms of legislation applicable to the work in this Contract.

4.4 Subcontracting

4.4.1 Subcontracting whole contract

4.4.1 The Contractor shall not subcontract the whole Contract.

4.4.2 Subcontractor to be approved

4.4.2 Except where otherwise provided in the Contract, the Contractor shall not subcontract any part of the Contract without the prior written consent of the Employer's Agent, which consent shall not be unreasonably withheld. *The Contractor is to complete the relevant section (if present) in the procurement document that solicits the name and contact details of subcontractors.*

4.4.3 Liability for subcontractors

4.4.3 The Contractor shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the Contractor.

4.4.4 Selection of subcontractors in consultation with Employer

4.4.4 The contractual relationship between the Contractor and any subcontractors selected by the Contractor in consultation with the Employer in accordance with the requirements of and a procedure set out in the Scope of Work, shall be the same as if the Contractor had appointed the subcontractor in terms of Clause 4.4.3

4.4.5 Contractor's liability unaffected by selection of subcontractors

4.4.5 Any appointment of a subcontractor ** shall not amount to a contract between the Employer and the subcontractor, or a responsibility or liability on the part of the Employer to the subcontractor and shall not relieve the Contractor from any liability or obligation under the Contract.

4.4.6 *Assignment in case of termination*

4.4.7 *Assignment of benefit of subcontract*

4.5 Notices and Fees

4.5.1 Giving notices and payment of fees

4.5.1 The Contractor:

4.5.1.1 Shall in the execution of the Works comply with the provisions of, and give all notices and pay all fees, taxes, levies and other charges required to be given or paid in terms of:

4.5.1.1.1 Any Act of Parliament, Ordinance, Regulation or By-law of any local or other statutory authority, and

4.5.1.1.2 Conditions imposed by any other body or person stated in the Scope of Work.

4.5.1.2 Indemnifies the Employer against any liability for any breach of the provisions of Clause 4.5.1.1.

4.5.2 Employer's responsibility for approval

4.5.2 *Unless specified otherwise in the procurement document*, the Employer shall be responsible for obtaining any planning approval required in respect of the Permanent Works and in respect of Temporary Works, which *are* specified or designed by the Employer's Agent.

4.5.3 Contractor's responsibility for consents

4.5.3 *Unless specified otherwise in the procurement document*, the Contractor shall be responsible for obtaining all requisite consent, permission and permits for the execution of the Works arising from the provisions referred to in Clause 4.5.1.1 and arising from the approvals referred to in Clause 4.5.2

4.5.4 Contractor to be compensated

4.5.4 The Employer shall refund to the Contractor all such sums as the Employer's Agent shall certify as justly payable and paid by the Contractor in compliance with the aforesaid provisions of this Clause, unless the necessity for such payment was identified in the Pricing Data or such sums are payable by the Contractor in the ordinary course of his business.

4.6 Patent rights

4.6.1 Patent and protected rights

4.6.1 Save in respect of the Employer's or the Employer's Agent's design of the Works or method of construction and proprietary brand materials specified by the Employer or the Employer's Agent, the Contractor indemnifies the Employer against any liability arising from the infringement of any patent rights, design, trade-mark or name or other protected right in respect of any design work, Construction Equipment, Plant, machine, work, method of construction or material used for or in connection with the Works.

4.6.2 Payment for rights

4.6.2 Except where otherwise specified in the Contract, the Contractor shall pay all amounts due by him in respect of the rights referred to in Clause 4.6.1.

4.7 Fossils

4.7.1 Fossils etc.

4.7.1.1 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer.

4.7.1.2 The Contractor shall take reasonable precautions to prevent any person from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, inform the Employer's Agent of such discovery and carry out the Employer's Agent's instructions for dealing therewith.

4.7.1.3 *The notification duty equally applies to the discovery of graves with human remains.*

If, by reason of such instructions, the Contractor suffers delay to Practical Completion and/or incurs proven additional cost he can, *in consultation with the Employer's Agent*, make a claim in accordance with Clause 10.1.

4.8 Facilities for others

4.8.1 Facilities for others

- 4.8.1 The Contractor shall, in accordance with the Contract or the requirements of the Employer's Agent, afford on the Site all reasonable opportunities for carrying out their work to:
- 4.8.1.1 The Employer,
 - 4.8.1.2 Any other contractors employed and other persons authorised by the Employer, and
 - 4.8.1.3 Any local or other statutory authorities, who may be engaged in the execution on the Site of any work not included in the Contract, provided that adequate notice of the necessity thereof is given to the Contractor.

4.8.2 Additional Compensation for providing facilities

- 4.8.2 If, pursuant to Clause 4.8.1, the Contractor, on the written instruction by the Employer's Agent:
- 4.8.2.1 Makes available to the Employer, or to any such contractor or any for providing such authority, any roads or ways for the maintenance of which facilities the Contractor is responsible, or
 - 4.8.2.2 Provides any other facility or service of whatsoever nature to any of the said persons or authorities, the Contractor can, unless otherwise provided in the Contract, *in consultation with the Employer's Agent*, make a claim in accordance with Clause 10.1 for the delay to Practical Completion and/or incurrence of proven additional cost by him.

4.9 Construction Equipment

4.9.1 *Prohibition on removal of Construction Equipment*

4.10 Contractor's employees

4.10.1 Engagement of employees

- 4.10.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all employees and for their payment, housing, feeding and transport (provided that any use of any part of the Site for the said purposes shall be subject to the prior approval of the Employer's Agent) and the Contractor indemnifies the Employer against any liability arising out of the Contractor's said arrangements, whether such arrangements involve the use of the Site or not.

4.10.2 Information in respect of employees

- 4.10.2 The Contractor shall, if instructed by the Employer's Agent, deliver to the Employer's Agent information, in such form and at such intervals as the Employer's Agent may prescribe, in respect of employees employed by the Contractor on the Site from time to time.

4.11 Competent employees

4.11.1 Competent employees

- 4.11.1 The Contractor shall employ on the Site, for the execution and completion of the Works, only such persons as are careful, competent and efficient in their various trades and professions.

4.11.2 Removal of incompetent employees

- 4.11.2 The Employer's Agent shall be entitled to instruct the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution of the Works who is guilty of misconduct, or is incompetent or negligent in the proper performance of his duties, or whose presence on the Site is undesirable, and such person shall not again be employed on the Works without the permission of the Employer's Agent.

4.12 Contractor's superintendence

4.12.1 Contractor's superintendence

4.12.1 The Contractor shall provide all necessary superintendence during the execution of the Works.

4.12.2 Contractor's site agent

4.12.2 The Contractor or a competent and authorised agent or representative approved of in writing by the Employer's Agent (which approval may at any time be withdrawn in writing), hereinafter called the Contractor's Site Agent, shall be on the Site at all times when work is being performed or when the Employer's Agent shall, with reason, require his presence.

4.12.3 Site Agent to receive instructions

4.12.3 The Contractor's Site Agent shall have authority to receive, on behalf of the Contractor, all oral or written communications from the Employer's Agent or the Employer's Agent's representative or other person authorised by the instructions Employer's Agent in terms of Clause 3.3.4.

5. TIME AND RELATED MATTERS

5.1 Time calculations

5.1.1 *Time Calculations*

5.2 Commencement of the Contract

5.2.1 Commencement of the Contract

5.2.1 The Contract shall commence on the day that the SLA is signed by the contractor.

5.3 Commencement of the Works

5.3.1 Commencement of the Works

5.3.1 *The Contractor shall, within a week after the receipt of the order form, contact the Employer's Agent to make arrangements for the site handover. The contractor shall establish site within 2 weeks, and begin work within three weeks after the site handover order. All documentation required as per the contract data should be submitted before, or on the day of the site hand over.*

5.3.2 Unaccepted documentation

5.3.2 *If the documentation referred to in Clause 5.3.1 is not submitted before or on site handover or is found to be unacceptable, the Employer may terminate the Contract in terms of Clause 9.2.*

5.3.3 *Time to instruct commencement of the Works*

5.4 Access to the Site

5.4.1 Access to and possession of Site

5.4.1 The Employer shall, upon the Employer's Agent's instruction to commence executing the Works referred to in Clause 5.3.1, *organise a site hand over after which the Contractor will have right of access to the Site, and possession of the whole of the Site.*

5.4.2 Access not exclusive

5.4.2 If the access to and possession of Site referred to in Clause 5.4.1 shall not be exclusive to the Contractor, such limitations shall be set out in the Contract Data.

5.4.3 Delays in site handover

5.4.3 If the Contractor suffers delay to Practical Completion due to a delayed site handover, (s)he can make a claim in accordance with Clause 10.1, for extension of the completion period by the number of days that the site handover was delayed, within 2 weeks after the original site handover date.

5.5 Time for Practical Completion

5.5.1 Time for Practical Completion

- 5.5.1 Subject to any requirement in the Contract as to the Practical Completion of any portion of the Permanent Works before Practical Completion of the whole, the whole of the Works shall be completed within the Due Completion Date.

5.6 Programme

5.6.1 Programme of Works

- 5.6.1 The Contractor shall **submit** an initial work programme to the Employer's Agent within 2 weeks of the site handover. Whenever this approved programme no longer reflects that actual progress will meet the Due Completion Date, the Contractor shall deliver to the Employer's Agent an adjusted programme.

5.6.2 Contents of the programme

- 5.6.2 The initial programme and all subsequent adjusted programmes shall show and, when relevant, describe in statements, the entire scope of the work to be performed including but not limited to:
- 5.6.2.1 The Commencement Date, commencement of the Works, Due Completion Date, and the planned completion date, *as well as other milestones.*
 - 5.6.2.2 The sequence and timing of the Works,
 - 5.6.2.5 Other programming information set out in the Scope of Work,

5.6.3 Approval of the programme

- 5.6.3 The Employer's Agent shall, within 7 days after the Contractor has submitted the initial or adjusted programme, approve such programme or, giving his reasons, instruct the Contractor to amend it, failing which, the submitted programme shall be deemed to be the approved programme.

5.6.4 Review and adjustment of the programme

- 5.6.4 The programme shall be subject to review on a bimonthly basis. If so instructed by the Employer's Agent, the approved programme shall be adjusted by the Contractor:

5.6.5 *Approval means no relief of Contractor's responsibilities*

5.7 Progress of the Works

5.7.1 Rate of progress

- 5.7.1 The Employer's Agent may if, at any time the rate of progress of the Works or any part thereof has fallen behind the approved programme or if there is no approved programme, making his own assessment, he shall so notify the Contractor in writing, with specific reference to this Clause. The Contractor shall thereupon, subject to the approval of the Employer's Agent, which approval shall not be unreasonably withheld, take the necessary steps to expedite progress so as to complete the Works, or the said part thereof, by the Due Completion Date. The Employer's Agent may instruct the Contractor to submit an adjusted programme to accommodate the steps agreed upon between them to meet the Due Completion Date. No instruction by the Employer's Agent to the Contractor to improve his rate of progress in this regard will qualify for additional compensation.

5.7.2 *Night work*

5.7.3 Acceleration

- 5.7.3 The Employer's Agent may request the Contractor to submit, or the Contractor may submit to the Employer's Agent, a revised programme and cost determined in accordance with Clause 6.4 for accelerating the rate of progress to achieve Practical Completion before the Due Completion Date. If accepted by the Employer, the Due Completion Date shall be adjusted

accordingly and the conditions for payment of cost shall be agreed in writing by the Employer's Agent.

5.8 Non-working times

5.8.1 *Non-working times*

5.8.2 *Notice for work during non-working times*

5.9 Instructions

5.9.1 Drawings and instructions

5.9.1 The Employer's Agent shall deliver to the Contractor copies of the drawings and any instructions required for the commencement of the Works *at the latest at site handover*.

5.9.2 *Further drawings and instructions*

5.9.3 *Contractor to give notice timeously*

5.9.4 *Documents to be provided timeously*

5.9.5 *Contractor to give effect to drawing etc.*

5.9.6 *Employer's Agent's failure to comply timeously *

5.9.7 Employer's Agent to approve Contractor's designs and drawings

5.9.7 If the Contract expressly provides for the preparation by the Contractor of designs and details of any work to be supplied, he shall, taking account of the approved programme, in good time submit *these drawings* for approval by the Employer's Agent, and shall obtain the Employer's Agent's written approval, before commencing the work. Once any such drawing has been approved by the Employer's Agent, it shall not be departed from in any way except with the written consent of the Employer's Agent.

5.10 Delays attributable to the Employer

5.10.1 Delays attributable to the Employer

5.10.1 If the Contractor suffers delay to Practical Completion and/or incurs proven additional cost from failure or delay on the part of the Employer, his agents, employees or other contractors (not employed by the Contractor), the Contractor *can, in consultation with the Employer's Agent, make an Extension of Time for Practical Completion and/or monetary compensation claim in accordance with Clause 10.1 within 28 days after the cause of the delay occurred. The honouring of that claim by the Employer's Agent shall not be unreasonably be withheld.*

5.11 Suspension of the Works

5.11.1 Suspension of the works

5.11.1 *If, the Employer's Agent instructs the Contractor in writing to suspend the works, the Contractor shall properly protect the Works as far as is necessary.*

5.11.2 Claim as a consequence of suspension

5.11.2 *If the Contractor is not directly or indirectly to blame for the suspension of Work because of Breach of Contract, the Contractor, can, in consultation with the Employer's Agent, make an Extension of Time for Practical Completion and/or monetary within 28 days after the suspension of Works started. The honouring of that claim by the Employer's Agent shall not be unreasonably be withheld.*

5.11.3 *Suspension lasting more than 84 days*

5.12 Extension of time for Practical Completion

5.12.1 Extension of time for Practical Completion

5.12.1 If the Contractor considers himself entitled to an extension of time for circumstances of any kind whatsoever which may occur that will, in fact, delay Practical Completion of the Works, the Contractor shall claim in accordance with Clause 10.1 such extension of time as is appropriate.

5.12.2 Some reasons for extension of time

- 5.12.2 Without limiting the generality of Clause 5.12.1, the circumstances referred to in that Clause include:
- 5.12.2.1 The amount and nature of additional work,
 - 5.12.2.2 Abnormal climatic conditions,
 - 5.12.2.3 Any provision of these Conditions which allows for an extension of time,
 - 5.12.2.4 Any disruption which is entirely beyond the Contractor's control.

5.12.3 Relevant adjustments to General Items

5.12.3 If an extension of time is granted, the Contractor shall be paid *pro rata* time-related Preliminary & General items, unless the contract prescribes the payment of Time related items to be based on work progress, in which case the latter prevails and no extra compensation will be paid.

5.12.4 *Acceleration instead of extension of time*

5.13 Penalty for delay

5.13.1 Penalty for delay

5.13.1 If the Contractor fails to complete the Works to the extent which entitles him to receive a Certificate of Practical Completion in terms of Clause 5.14.2, by the Due Completion Date, the Contractor shall be liable to the Employer for an amount of up to 0.05% of the contract sum minus the Contingencies as a penalty for every day that elapses between the Due Completion Date and the actual date of Practical Completion. *This amount shall be subtracted from the Retention moneys and/or from the claim of one of the part payments.* The imposition or non-imposition of such penalty shall not relieve the Contractor from his obligation to complete the Works or from any of his obligations and liabilities under the Contract.

5.13.2 Reduction of penalty:

- 5.13.2 If, before the issue of the Certificate of Practical Completion of the whole of the Works,
- 5.13.2.1 Any part of the Works has been Certified by the Employer's Agent as complete in terms of a Certificate of Practical Completion, or
 - 5.13.2.2 *The Contractor can submit valid reasons, other than the ones mentioned under clause 5.12.2 for the Works not having reached Practical Completion by the due Completion Date,* the penalty for delay shall be *waived or* reduced by an amount which is determined by the Employer's Agent to be appropriate in the circumstances.

5.14 Completion

5.14.1 Practical Completion

5.14.1 The Contractor shall be entitled to receive a Certificate of Practical Completion when the Works have been completed *to the extent that the works can be used for the purpose it was intended.* *When the Contractor believes he has reached, or is about to reach, Practical Completion, the Contractor shall request the Employer's Agent for a Practical Completion inspection, which the Employer's Agent will do within 14 days after receiving such request. On inspection of the works, the Employer's Agent will draw up a snag list of incomplete works for the Contractor to attend to before a Certificate of Completion can be issued, and will issue a deadline for these works, usually two to four weeks after the Contractor received the snag list. Should the Contractor not request a Practical Completion inspection, Practical Completion shall be taken as being achieved on the Due Completion Date, and a date for inspection set accordingly.*

5.14.2 Issue of Certificate of Practical Completion

5.14.2.1 Should, to the assessment of the Employer's Agent, enough progress have been made with the works to allow for them to be used for their intended purpose, the Employer's Agent will *issue*

to the Contractor a Certificate of Practical Completion, accompanied by a so-called Snaglist of outstanding works, to be completed to justify the issuing of a Certificate of Completion

5.14.2.2 In the case of insufficient progress, the Employer's Agent will not issue the Practical completion certificate, but instead issue to the Contractor a written list setting out the work to be completed to justify Practical Completion.

5.14.2.3 As soon as the work referred to in the list issued in terms of Clause 5.14.2.2 has been inspected and assessed to be duly completed, the Employer's Agent shall deliver to the Contractor and to the Employer a Certificate of Practical Completion together with the snag list.

5.14.3 Consequences of Practical Completion

5.14.3 Upon the issue of the Certificate of Practical Completion:

5.14.3.1 The Works shall be deemed to have been completed for the purposes of Clause 5.13.1, and

5.14.3.2 The Employer or Beneficiary shall be entitled to take occupation of the Works, provided that the Contractor is given access to complete the Works in terms of the Contract and no activities are undertaken by the user of the facility that prevent the Contractor for completing his work.

5.15.3.3 The Contractor will not be responsible to repair wear and tear to the facility as a result of the occupation before completion.

5.14.4 Certificate of Completion

5.14.4.1 As soon as the work referred to in the further list (*Snaglist*) issued in terms of Clause 5.14.2 has been duly completed, the Employer's Agent shall deliver to the Contractor and the Employer a Certificate of Completion certificate.

5.14.4.2 This certificate will also stipulate the date by which any remaining work and/or the rectifying of defects, and/or the clearing of the Site is to be completed. The Contractor shall be obliged to complete the work specified by that date. Should the Contractor fail to complete the work by the specified date, the Defects Liability Period (if any) shall be extended by the amount of the additional time taken by the Contractor to complete the work specified, and the terms of Clause 7.8.3 shall apply with the necessary changes.

5.14.5 Consequences of Completion

5.14.5 Upon the issue of a Certificate of Completion, unless otherwise provided in the Contract:

5.14.5.1 The performance guarantee, (if any), shall be returned within 14 days to the Guarantor,

5.14.5.2 The Defects Liability Period shall commence,

5.14.5.3 The retention shall be reduced to half in terms of Clause 6.10.5,

5.14.5.4 The possession of the Site shall revert to the *Beneficiary*, and

5.14.5.5 Insurance of the Works shall cease in terms of Clause 8.6.1.

5.14.6 *Occupation by the Employer*

5.14.7 *Different dates of Practical Completion*

5.15 Clearance of Site

5.15.1 Clearance of Site on Completion

5.15.1 On completion of the Works the Contractor shall clear away and remove from the Site all Construction Equipment, rubbish and Temporary Works of every kind and leave the whole of the Site and the Works clean and in a safe condition. All streams and watercourses shall be cleaned and restored to the condition as at the commencement of the Works. *Usable surplus materials that have been fully paid for should be left on site, provided they are not obstructing access, are no source of pollution, nor an eyesore, and the owners of the site are in agreement.*

5.16 Approval

5.16.1 Final Approval Certificate

5.16.1 The Works shall not be considered as completed in all respects until a final site inspection by the Employer's Agent has taken place, and a Final Approval Certificate has been delivered by the Employer's Agent to the Employer and the Contractor stating the date on which the final inspection took place and works were found to be complete, and with all defects corrected.

The final inspection and the Final Approval Certificate shall be delivered by the Employer's Agent as soon as practicable after the completion of the whole of the Works or of the expiration of the Defects Liability Period.

5.16.2 Approval only by Final Approval Certificate

5.16.2 No certificate other than the Final Approval Certificate referred to in Clause 5.16.1 shall be deemed to constitute approval of the Works or shall be taken as an admission of the due performance of the Contract or any part thereof, nor shall any other certificate exclude or prejudice any of the powers of the Employer's Agent.

5.16.3 Latent defect liability

5.16.3 The Contractor's liability for any latent defects shall continue beyond the date of the Final Approval Certificate but the Employer shall have no claim against the Contractor arising out of any latent defect which first manifests itself later than the period stated in the Contract Data after the issue of the Final Approval Certificate in terms of this Clause.

6. PAYMENT AND RELATED MATTERS

6.1 Payment to Contractor

6.1.1 Payment to Contractor

6.1.1 As consideration for the construction, completion and defect correction of the Works, the Employer shall pay the Contractor in terms of the provisions of the Contract.

6.2 Security

6.2.1 Delivery of security

6.2.1 The Contractor shall deliver to the Employer's Agent, as part of the documentation required before commencement with Works execution in accordance with Clause 5.3.1, at his cost, the type of security (bank guarantee or retention) for the due performance of the Contract, as selected in the Contract Data.[1]

6.2.2 Contractor failing to select or provide security

6.2.2 If the Contractor fails to select the security to be provided, or if the Contractor fails to provide the selected security within the time period stated in Clause 5.3.2, or if the performance guarantee shall differ substantially from the pro forma, it shall legally be deemed that the Contractor has selected a security of ten per cent retention of the value of the Works without limiting the Employers right to terminate the contract in terms of clause 9.2.

6.2.3 Validity of performance guarantee

6.2.3 If the Contractor has selected a performance guarantee as security, he shall ensure that it remains valid and enforceable until the Certificate of Completion is issued. The performance guarantee shall specify an expiry date, and if the Contractor has not become entitled to receive the Certificate of Completion of the Works by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the performance guarantee until such time that the Works have been completed.

6.3 Variations

6.3.1 Variations

6.3.1 If, at any time before the issue of the Certificate of Completion, the Employer's Agent shall require any variation of the form, quality or quantity of the Works or any part thereof that may be necessary or for any reason appropriate, he shall have power to order the Contractor to do any of the following:

- 6.3.1.1 Increase or decrease the quantity of any work included in the Contract,
- 6.3.1.2 Omit any such work, provided it is not to be carried out by someone else,
- 6.3.1.3 Change the character or quality of any such work,

6.5 Dayworks

6.5.1 Basis of payment for dayworks

- 6.5.1 If work is to be executed on a daywork basis:
- 6.5.1.1 The Contractor shall be paid for such work under the provisions set out in the daywork schedule included in the Pricing Data and at the rates and/or prices stated therein.
- 6.5.1.2 In the absence of a daywork schedule, and for items not included in the daywork schedule, the Contractor shall be paid the aggregate of:
- 6.5.1.2.1 The gross remuneration of the workmen, and of any foremen, for the time they are actually engaged in the work concerned,
- 6.5.1.2.2 The net cost of the materials actually used,
- 6.5.1.2.3 The percentage allowances stated in the Contract Data, which allowances shall be held to cover all charges for the Contractor's and subcontractor's profits, timekeeping, clerical work, insurance, establishment, superintendence and the use of hand tools, and
- 6.5.1.2.4 An amount in respect of Construction Equipment calculated as provided for in Clause 6.5.1.3.
- 6.5.1.3 The use of Construction Equipment shall be charged on a time basis at the rates stated in the Pricing Data, failing which at rates to be agreed between the Contractor and the Employer's Agent or, failing agreement, to be determined by the Employer's Agent on the basis of ruling plant hire rates.

6.5.2 Quotations for materials

- 6.5.2 If required by the Employer's Agent, the Contractor shall, before ordering material, submit to the Employer's Agent quotations for the same for his approval, which approval shall not be unreasonably withheld, and shall submit to him such receipts or other vouchers as proof for the amounts paid.

6.5.3 Details to be recorded

- 6.5.3 The Contractor shall, during the continuance of all work executed on a daywork basis, deliver each day to the Employer's Agent or the Employer's Agent's Representative a list of the exact occupation and time of all workmen and foremen employed on such work and a statement showing the description and quantity of all materials and Construction Equipment used therefor (other than tools the cost of which is covered by the percentage addition in accordance with the daywork schedule in terms of which payment for daywork is made). If correct and agreed upon by the Employer's Agent or the Employer's Agent's Representative and the Contractor, the Employer's Agent or the Employer's Agent's Representative shall sign the copies of each list and statement and return such copies to the Contractor within one working day of the carrying out of the work.

6.5.4 Dayworks statement

- 6.5.4 For the purpose of each monthly certificate referred to in Clause 6.10.1, the Contractor shall deliver to the Employer's Agent a priced statement of the labour, materials and Construction equipment used (except as provided in Clause 6.5.3) and the Contractor shall not be entitled to any payment for the daywork concerned unless and until such statement has been properly rendered and supported by one copy of each of the signed lists and statements referred to in Clause 6.5.3.

6.6 Provisional sums and prime cost sums

6.6.1 Provisional sums

- 6.6.1 If any provisional sum is set out in the Pricing Data and the work to which the provisional sum relates has been ordered by the Employer's Agent and is:
- 6.6.1.1 Executed by the Contractor, it shall be valued and paid for in accordance with the terms of Clause 6.4,
- 6.6.1.2 Executed by a subcontractor appointed in terms of Clause 4.4.3, the Contractor shall be paid the sum or sums paid or due to be paid by him to the subcontractor, *plus the mark-up percentage stated by the Contractor in his Pricing Data, or, in the absence thereof, a default mark-up of 10%*.

- 6.6.2 If the Contractor in the Pricing Data has added to the provisional sum concerned a sum in respect of charges and profits, a pro rata amount of such sum, added in the proportion that the amount paid to the subcontractor by the Contractor or the Employer bears to the provisional sum.

6.6.2 Prime cost sums

- 6.6.2 Where a prime cost sum is provided in the Pricing Data to cover the cost price of certain goods, services or materials to be supplied under the Contract, the amount to be paid therefor to the Contractor shall be the actual price payable by him, in substitution for the prime cost sum, together with any charge included by the Contractor in the Pricing Data to allow for labour, profit, carriage, storage, establishment and other costs related to such goods, services or materials.

6.6.3 Provisional/prime cost sums and contingency allowance

- 6.6.3 Expenditure in connection with provisional and prime cost sums and under the contingency allowance (if any) shall be solely at the discretion and on the instruction of the Employer's Agent. Any parts of the amounts provided in the Pricing Data which are **not** expended shall **not** be included in the Contract Price, *and will not be paid out to the Contractor.*

6.6.4 Supporting documents

- 6.6.4 The Contractor shall produce all invoices, vouchers and receipts in respect of payments made by him in connection with provisional or prime cost items when he requires payment for these items.

6.7 Measurement of the Works

6.7.1 Quantities

- 6.7.1 The quantities set out in the Bill of Quantities/Pricing Schedule ** are the **estimated** quantities of the work and they are not to be taken as the actual and final quantities of the Works to be executed by the Contractor. *** Should, in the view of the Contractor, the quantities or volumes provided in the Bill of Quantities/Pricing Data differ substantially of those required for the Works, he should point such out to the Employer's agent who will subsequently consider if:*
- 6.7.1.1 *The degree to which the volumes and quantities exceed the ones provided in the Pricing data would warrant payment from the Contingencies allocation*
- 6.7.1.2 *Reduced numbers, volumes and quantities would warrant consideration as savings, to be off set against possible Contingencies items.*

6.7.2 Work to be measured

- 6.7.2 The Employer's Agent shall ascertain and determine the value of the Works but, when required to do so by the Employer's Agent, the Contractor shall measure the work executed *** in his stead and report on it to the Employer's Agent.*

6.7.3 Employer's Agent's intention to measure

- 6.7.3 The Employer's Agent shall, when he wishes to *inspect the site in order to make any measurement, or requires any parts of the Works to be measured in his presence, give notice of this fact and of the date and time at which he will be present to the Contractor who shall:*
- 6.7.3.1 *Attend or send a qualified agent to assist the Employer's Agent in making such measurement or to make such measurement in the presence of the Employer's Agent, and*
- 6.7.3.2 *Furnish all particulars required by the Employer's Agent.*

6.7.4 Contractor's failure to comply

- 6.7.4 If the Contractor, despite being required to do so, fails:
- 6.7.4.1 *To submit a supporting statement in terms of Clause 6.7.2, or*
- 6.7.4.2 *To attend or send his agent when given such notice in terms of Clause 6.7.3, the measurement made by the Employer's Agent or approved by him shall be taken to be the correct measurement of the work for the purpose of the payment certificate in respect of which the measurement has been made.*

6.7.5 Method of measurement

- 6.7.5 All the work shall be measured in accordance with the provisions of the Pricing Data.

- 6.3.1.4 Change the levels, lines, position and dimensions of any part of the Works,
- 6.3.1.5 Carry out additional work of any kind necessary for the completion of the Works, and
- 6.3.1.6 Change the specified or approved sequence or method of construction.
No such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

6.3.2 Orders for variations to be in writing

- 6.3.2 No such variation shall be made by the Contractor without a written order by the Employer's Agent in which it is stated to be a Variation Order;
Provided that:
 - 6.3.2.1 If the Contractor, as soon as possible, but within seven days after receiving an oral order or a written order which he contends to be a Variation Order, confirms, in writing to the Employer's Agent that it is indeed a Variation Order, and such confirmation is not contradicted, in writing, by the Employer's Agent to the Contractor within seven days of receipt thereof, it shall be deemed to be a Variation Order within the meaning of this Clause. If the Contractor fails to confirm such order within the seven day period, such order shall not be a Variation Order.

6.3.3 Changes in quantities

- 6.3.3 No increase or decrease in the quantity of any work, set out in the Bill of Quantities, **** that is not the result of a Variation Order, **** but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities, shall be deemed to be a variation to which this Clause applies and no order in writing shall be required therefor.

6.4 Value of variations

6.4.1 Valuation of variations

- 6.4.1 The value of all Variation Orders shall be calculated by the Employer's Agent in accordance with the following principles:
 - 6.4.1.1 Where work is of a similar character and executed under similar conditions to work priced in the Pricing Data, it shall be valued at *the tendered or quoted* rates and/or prices (including General Items) as may be applicable;
 - 6.4.1.2 Where work is not of a similar character or is not executed under similar conditions, the rates and/or prices in the Pricing Data shall be used as the basis for valuation as far as may be appropriate;
 - 6.4.1.3 Where work cannot reasonably be valued in accordance with Clauses 6.4.1.1 or 6.4.1.2, the value arising from all expenditure, including profit, necessary for executing the work shall be determined after due consultation by the Employer's Agent with the Employer and the Contractor; or
 - 6.4.1.4 In respect of additional or substituted work, the Employer's Agent may issue an instruction that the work shall be executed on a daywork basis in terms of Clause 6.5, *if the pricing schedule solicited rates for daywork items.*
 - 6.4.1.5 *Alternatively, the Employer's Agent may issue an instruction to the Contractor to submit a quote for those items required for the additional work on the basis of supplier quotes, and combine these, if applicable, with day work rates, if these are available. The Contractor will in this case be compensated on a proven cost, plus mark up basis.*

6.4.2 Delivering and applying valuation

- 6.4.2 The Employer's Agent shall, within 28 days after issuing the Variation Order or such other period as may be agreed between the parties, in writing, deliver to the Contractor and the Employer, in writing, the valuation of the Variation Order, and apply this valuation in certifying amounts payable to the Contractor, without prejudice to the Contractor's right to raise a dissatisfaction in terms of Clause 10.2.

6.4.3 Delay in delivering valuation

- 6.4.3 If the Employer's Agent's valuation is not received by the Contractor within the time referred to in Clause 6.4.2 the Contractor *can* in respect of the delay to Practical Completion and/or to proven additional cost of giving effect to the Variation Order, *after consultation of the Employer's Agent, make* a claim in accordance with Clause 10.1.

6.8 Adjustment in rates and/or prices

6.8.1 Rates and prices final and binding

6.8.1 The rates and/or prices stated in the Pricing Data shall be final and binding throughout the period of the Contract, *with the exception of the cases mentioned under clauses 6.8.2, 6.8.3, 6.8.4 and 6.8.5*

6.8.2 Application of contract Price adjustment Factor

6.8.2 If the Contract Data provides for the application of a Contract Price Adjustment Factor, the value of certificates issued in terms of Clause 6.10.1 (excluding the value of those special materials referred to in Clause 6.8.3) shall be increased or decreased by applying a Contract Price Adjustment Factor calculated according to the formula and the conditions set out in the Contract Price Adjustment Schedule.

6.8.3 Variations in cost of special materials

6.8.3 If price adjustment for variations in the cost of special materials is provided for in the Contract Data, it shall be made in the manner set out in the Contract Price Adjustment Schedule.

6.8.4 Subsequent changes in legislation

6.8.4 If at any time within 28 days before the closing date for tenders or thereafter, there occur changes to any Act of Parliament, Ordinance, Regulation or By-law of any local or other statutory authority which cause additional or reduced cost to the Contractor (other than in terms of Clauses 6.8.2 and 6.8.3) arising from the execution of the Contract, such additional or reduced cost shall, after due consultation between the Employer and the Contractor, be determined by the Employer's Agent and shall be added to or deducted from the Contract Price and the Employer's Agent shall notify the Contractor accordingly, with a copy to the Employer.

6.8.5 Price adjustments through balancing of the pricing data

6.8.5 *Should the Engineering Agent find that the rates of prices of individual line items of the original Pricing are not realistic, he may balance the Pricing Data and amend the items under consideration upwards or downwards to bring them in line with market values and submit them for approval to the Contractor, who will not unreasonably reject them. If accepted, these adjusted values become binding throughout the Contract period.*

6.9 *Vesting of Plant and materials*

6.9.1 *Vesting of Plant and materials*

6.9.2 *Definition of 'materials'*

6.9.3 *Identification of Plant and materials*

6.9.4 Prohibition on removal of Plant and materials

6.9.4 The Contractor shall not remove from the Site any ** materials which are on the Site or which are brought there from such place of fabrication or storage and shall use all ** materials exclusively for incorporation in the Permanent Works. *Unless the Contractor and Employer's Agent have agreed on a pro rata payment for the use of only part of the materials, any surplus material that has been fully paid for should be left on site after completion of the Works, adhering to the provisions made under Clause 5.15.1*

6.9.5 *No approval by vesting*

6.10 Payments

6.10.1 Interim payments

6.10.1 *The Employer's Agent will, after having inspected the Works or via the pre-approved submission by the Contractor of incontrovertible photographic or virtual evidence clearly showing key Works,*

prepare payment certificates on a monthly basis, or on shorter intervals if prompted by the Contractor, provided that enough progress is made, and send them to the Contractor for consideration. After the Contractor and the Employer's Agent have agreed on the valuation, the Contractor will submit a Statement (claim or invoice) for payment in such form and on such date as may be agreed between the Contractor and the Employer's Agent, or failing agreement, as the Employer's Agent may require.

The Employer's Agent shall, by signed payment certificates issued to the Employer and the Contractor, certify the amount he considers to be due to the Contractor, taking into account the following:

- 6.10.1.1 The estimated value of the Permanent Works executed and calculated in terms of the Contract up to the date of the Contractor's said statement;
- 6.10.1.2 The amount for any Temporary Works or other special items for which separate amounts are provided in the Pricing Data;
- 6.10.1.3 Any other additional amounts which are due to the Contractor or the Employer;
- 6.10.1.4 Adjustment under Clause 6.8;
- 6.10.1.6 A deduction of the amount of all previous payments.
- 6.10.1.7 A deduction for penalties imposed in terms of Clause 5.13.
- 6.10.1.8 Any sales tax or value added tax which the law requires the Employer to pay to the Contractor.
- 6.10.1.9 A deduction of retention money of
 - 6.10.1.9.1 - 10% if no bank guarantee has been submitted,
 - 6.10.1.9.2 - 5% if a bank guarantee has been submitted.

6.10.2 Valuation of materials brought on to Site

- 6.10.2.1 No valuation of materials will be made that have not been installed or otherwise been incorporated in the Works, unless the Employer's Agent has approved a written request for a special arrangement in this regards, prior to the delivery of the materials to site. The request should detail the type and quantities and/or volumes of the materials, and the estimated total value, including transport and delivery to site, of the materials, which will exclude plant and building equipment.
- 6.10.2.2 Should the Employer's Agent grant in principle approval for materials delivered to site to be included in the valuation, the Contractor shall deliver with his statement, copies of invoices or receipts in respect of the purchase and delivery of the materials for which the Contractor claims payment.
- 6.10.2.3 The valuation of such materials shall be 50% of the total of the purchase price and delivery cost, as reflected by the relevant invoices or receipts. **
Provided that, if the materials have been produced by the Contractor himself or if the valuation of such materials is not consistent with the relevant rates and/or prices set out in the Pricing Data, the Employer's Agent shall have the right to base the valuation and payment for such materials either on rates and/or prices consistent with the rates and/or prices set out in the Pricing Data or on current market prices.

6.10.3 Retention money

- 6.10.3 Payment of the amounts referred to in Clauses 6.10.1.1, 6.10.1.2, 6.10.1.3, and 6.10.1.4 shall be subject to a 10% retention by the Employer of an amount (called the retention money), being the percentage retention, of the selected security stated in the Contract Data, of the said amounts due to the Contractor, throughout the construction period. There will be no limit of Retention money, unless the Contractor has submitted a bank guarantee, in which case the Retention limit will be 5% of the contract value minus the contingencies.

6.10.4 Delivery, dissatisfaction with and payment of payment certificate

- 6.10.4 The Employer's Agent shall deliver to the Employer and the Contractor the payment certificate referred to in Clause 6.10.1 within 7 days after having completed the inspection on the basis of which the Payment Certificate was drawn up. Any dissatisfaction in respect of such payment certificate shall be dealt with in terms of Clause 10.2. The Employer shall pay the amount due to the Contractor within 30 days of receipt of the Contractor's Invoice/Claim by the Employer of the payment certificate signed by the Employer's Agent. Payment shall be subject to the Contractor submitting a tax invoice, if required by law, to the Employer for the amount due.

6.10.5 Payment of retention money

6.10.5 Save to the extent otherwise provided in Clause 6.10.6, when a Defects Liability Period is specified, one half of the retention money shall become due and shall be paid to the Contractor when the Employer's Agent has issued a Certificate of Completion in terms of Clause 5.14.4. The other half shall become due and shall be paid to the Contractor within 14 days of the expiration of the Defects Liability Period, which may be extended in terms of Clauses 5.14.4 or 7.8.1, if necessary;

Provided that:

6.10.5.1 If the Defects Liability Period is extended in terms of Clauses 5.14.4 or 7.8.1 or if at the expiration of the original Defects Liability Period there remains to be executed by the Contractor any works ordered during such period in terms of Clauses 7.7 and 7.8, the Employer shall be entitled to withhold payment until the completion of the work concerned, of so much of the second half of the retention money as shall represent the cost of such work;

6.10.5.2 In the event of different Defects Liability Periods having become applicable to different parts of the Works pursuant to Clause 5.14, the expression retention money shall be deemed to mean such proportion of the total retention money as is applicable to each completed part of the Works; and

6.10.5.3 If a Defects Liability Period is not specified, the whole amount of the retention money shall become due and shall be paid to the Contractor when the Contractor has become entitled, in terms of Clause 5.16.1, to receive a Final Approval Certificate.

6.10.6 Set-off and delayed payments

6.10.6 In respect of any amount payable to the Contractor in terms of the Contract:

6.10.6.1 The Employer may deduct from such payment any amount to which payments he is entitled in terms of this Contract or by law to set off against such payment and shall state, in a written notice to the Contractor, the reasons for such deductions.

6.10.6.2 ***Removed***

6.10.7 Corrections to payment certificates

6.10.7 The Employer's Agent may by any payment certificate make any correction or modification of any previous payment certificate, which has been issued by him.

6.10.8 Contractor's completion statement

6.10.8 Within 14 days of the date of the Certificate of Completion, the Contractor shall deliver to the Employer's Agent a completion statement showing the value of work done in respect of which a Certificate of Completion has been issued and shall supply such further information as the Employer's Agent may reasonably require. The Contractor shall not be entitled to any payment in respect of any matter which has not been included in such completion statement save as provided for in Clauses 5.14, 7.7 and 7.8 in respect of work executed during the Defects Liability Period and/or Clauses 10.3 to 10.11 in respect of any dispute. The Employer's Agent shall deliver to the Employer and the Contractor the payment certificate in respect of the completion referred to above within 14 days of the receipt by the Employer's Agent of the Contractor's said statement, and the Employer shall pay the amount due to the Contractor within 28 days after receipt by the Employer of the payment certificate signed by the Employer's Agent.

6.10.9 Final payment certificate

6.10.9 Within 14 days *before* the date of final approval as stated in the Final Approval Certificate, the Contractor shall deliver to the Employer's Agent a final statement claiming final settlement of all moneys due to him (save in respect of matters in dispute, in terms of Clauses 10.3 to 10.11, and not yet resolved). The Employer's Agent shall, within 14 days after receiving the Contractor's statement, *after having satisfied himself that no patent deficiencies have been found in the completed works for which the Contractor could be held liable*, issue to the Employer and the Contractor a Final Payment Certificate, the amount of which shall be paid to the Contractor within 30 days of the receipt of the Contractor's *invoice*, after which no further payments shall be due to the Contractor (save in respect of matters in dispute, in terms of Clauses 10.3 to 10.11 and not yet resolved).

6.11 Variations exceeding 15 per cent

6.11.1 *Variations exceeding 15 %*

7. QUALITY AND RELATED MATTERS

7.1 Quality of Construction Equipment

7.1.1 Quality of Construction Equipment

7.1.1 The nature and quality of all Construction Equipment to be provided by the Contractor for the execution and making good of defects of the Works shall be such that it corresponds with the requirements and Equipment scope of the Works and the Construction Equipment shall be in good working order and shall, in particular, well suited to the purpose for which it is to be used. The Contractor shall provide and maintain sufficient Construction Equipment to meet all the requirements and, when so ordered by the Employer's Agent, the Contractor shall remove from the site all unsuitable, outdated and obsolete Construction Equipment.

7.2 Quality of Plant, workmanship and materials

7.2.1 Quality of Plant, workmanship and materials

7.2.1 All Plant to be supplied and all workmanship and materials shall be manufactured, executed and be of the respective kinds specified in the Contract and shall comply with the requirements set in the Scope of Work and in the Employer's Agent's instructions or, failing requirements or instructions, of the respective kinds suitable for the purpose intended.

7.3 Access to the Works

7.3.1 Access to the Works

7.3.1 The Employer, the Employer's Agent and any person authorised by either of them shall, during working hours, have access to the Works and to the Site and to all workshops and places where work is being prepared or where Plant, materials, manufactured articles and machinery are being manufactured or obtained for the Works, to inspect, examine and test such Plant, materials and workmanship and verify progress in accordance with the programme. The Contractor shall afford any necessary facility for and assistance in obtaining the right to such access.

7.4 Samples and testing

7.4.1 Samples of materials

7.4.1 The Contractor shall, as set out in the Scope of Work or as instructed by the Employer's Agent, provide at his own expense samples of materials intended to be incorporated into the Works.

7.4.2 Test specimens from the Works

7.4.2 The Contractor shall, as set out in the Scope of Works or as instructed by the Employer's Agent, take and deliver to the Employer's Agent test specimens from portions of the Works already constructed, and make good any resultant damage to the Works.

7.4.3 Tests

7.4.3 The Contractor shall, in accordance with the Scope of Work or if instructed by the Employer's Agent, carry out tests on Plant and samples of materials intended to be incorporated into the Works and on any test specimens from portions of the Works, and shall carry out any other tests specified in the Scope of Works. The Contractor shall provide all necessary assistance, labour, materials, electricity, fuel, testing equipment and instruments for the purpose of such tests to be performed by him or, if so specified in the Scope of Work or instructed by the Employer's Agent, for the purposes of tests to be performed by others.

7.4.4 Cost of tests specimens and tests

7.4.4 The following provisions shall apply in respect of the cost of the Contractor's services in terms of Clauses 7.4.2 and 7.4.3:

- 7.4.4.1 The Contractor shall be deemed to have allowed in his rates and/or prices for all such services as are required to be rendered by him, provided that the tests have been particularised in the Scope of Work in sufficient detail for him to allow for them, and
- 7.4.4.2 The Contractor shall be paid the cost of any services not covered by Clause 7.4.4.1; *Except when any test has established that the Plant, workmanship or the materials used do not comply with the Contract, in which case the Contractor shall not be paid any amount in respect of the testing services concerned. ***

7.4.5 Exchange of reports on tests

- 7.4.5 The Employer's Agent and the Contractor shall deliver to each other, as and when testing has been carried out, accurate and complete copies of all reports on tests carried out by or on behalf of either party, save to the extent that any such reports are prepared specifically for the purpose of proceedings in terms of Clauses 10.3 to 10.11.

7.5 Examination of the Works

7.5.1 Examination of work before covering up

- 7.5.1 No part of the Works or excavations shall be covered up or put out of view without the consent of the Employer's Agent, and the Contractor shall afford full opportunity for the Employer's Agent to examine and measure the Works and to inspect the excavations before any Permanent Works are placed thereon.

7.5.2 *Delivery of Plant to Site*

7.5.3 Notice to be given when ready for testing

- 7.5.3.1 The Contractor shall give adequate written notice to the Employer's Agent whenever ~~Plant or~~ any part of the Works or excavations are ready or almost ready for testing or examination. The Employer's Agent shall, unless he considers it unnecessary and advises the Contractor accordingly in writing (in which event he shall be deemed to have given the consent required in terms of this Clause), attend, as soon as practicable, for the purpose of testing such ~~Plant or~~ examining such work or excavations;
- 7.5.3.2 *The contractor can make a claim in accordance with Clause 10.1 in respect of the delay to Practical Completion and/or to proven additional cost if, in his opinion, the Employer's Agent has unnecessarily, and without apparent valid reason, delayed the inspection.*

7.5.4 *Delay by Employer to take delivery of Plant*

7.5.5 Uncovering and making openings

- 7.5.5 The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Employer's Agent may from time to time order and reinstate and make good such part or parts in accordance with the terms of the Contract. If any such part or parts have been covered up or put out of view after compliance with the requirements of Clauses 7.5.1 and 7.5.3 and are found to have been executed in accordance with the Contract, the Contractor shall in respect of the delay to Practical Completion and/or to proven additional cost, be entitled to make a claim in accordance with Clause 10.1, but in any other case the cost shall be borne by the Contractor and no extension of time shall be given.

7.6 Defective Plant, materials and work

7.6.1 *Making good and retesting of Plant*

7.6.2 *Consequences of failure of retesting of Plant*

7.6.1 Defective plant no valid reason for time extension

- 7.6.1 *The Contractor cannot use defective plant, or the late arrival or unavailability of plant as a motivation for postponement of the Due Completion Date.*

7.6.2 Removal of improper work and materials

- 7.6.2 The Employer's Agent shall, during the progress of the Works, have the power to order, in writing, from time to time, within such time or times as specified in the order:
- 7.6.2.1 The removal from the Site of any materials which are not in accordance with the Contract and the substitution of proper and suitable materials therefor, and
- 7.6.2.2 The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of any work which, in respect of materials or workmanship, is not in accordance with the Contract.

7.6.3 *Default of the Contractor in compliance with Employer's Agent's orders*

7.7 Search for defects

7.7.1 Contractor to search for defects

- 7.7.1 The Contractor shall by written order from the Employer's Agent, search for the cause of any defect. If such defect is one for which the Contractor is not liable under the Contract, the cost of the work carried out by the Contractor in the search shall be paid to him. If such defect is one for which the Contractor is liable, the cost of such work shall be borne by the Contractor.

7.8 Defects

7.8.1 Making good of defects in the Defects Liability Period

- 7.8.1 To the intent that the Permanent Works shall at, or as soon as practicable after the expiration of the Defects Liability Period, be in the condition (fair wear and tear excepted) required by the Contract, the Contractor shall, during the Defects Liability Period, execute all such repair, reconstruction, rectification and making good of defects, shrinkages, settlements or other faults as may be ordered, in writing, by the Employer's Agent. All such work shall be carried out in terms of the Contract and shall be completed during the Defects Liability Period or, if necessary, within such time thereafter as the Employer's Agent shall, in writing, allow. **

7.8.2 Cost of making good defects

- 7.8.2 All such remedial work shall be carried out by the Contractor,
- 7.8.2.1 At his own expense, if the necessity therefor is due to Plant, or the use of materials or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation under the Contract,
- 7.8.2.2 However, if such remedial work is due to any other cause, such work, if carried out by the Contractor, shall be valued and paid for in accordance with Clause 6.4, *provided that an additional budget would be available to compensate the Contractor. In the absence of such budget, there would be no obligation for the Contractor to make good any defects, unless he would be prepared to do such for free.*

7.8.3 Remedy on Contractor's failure to carry out required work

- 7.8.3 If the Contractor shall fail, within 28 days of receipt of written notice from the Employer's Agent, to do any remedial work required by the Employer's Agent, the Employer shall be entitled to have such work done by his own workmen or by others, and:
- 7.8.3.1 If such work should have been done by the Contractor at his own expense, the Employer shall be entitled to recover from the Contractor the cost thereof, *for example via the use of retention moneys or (part of) the Guarantee, if available.*
- 7.8.3.2 If the cost of such work, had it been done by the Contractor, would have been assessed and paid for as specified in Clause 7.8.2.2, the Employer shall be entitled to recover from the Contractor the amount by which the actual cost exceeds the cost which would have been so paid to the Contractor.

7.9 Urgent remedial work

7.9.1 Urgent remedial work

- 7.9.1 | If, by reason of any accident or failure, or other event at, on, or in connection with the Works or any part thereof, either during the execution of the Works or during the Defects Liability Period

(if any), any remedial or other repair work shall be urgently necessary for the safety and protection of the Works, or persons, or property, and the Contractor is not available or is unable to do such work, the Employer may have the necessary work or repair done by his own workmen or by others.

If the work so done by the Employer is work which the Contractor was liable to do at his own expense under the Contract, all costs incurred by the Employer in so doing shall be determined by the Employer's Agent and the Employer shall be entitled to recover from the Contractor such amount.

If the work so done is work for which the Contractor was not liable, the Employer will fund the remedial work with money from outside the contract

8. RISKS AND RELATED MATTERS

8.1 Protection of the Works

8.1.1 Protection of the Works

8.1.1 The Contractor shall protect the Works properly and shall so arrange his operations that they pose no danger, and cause the least possible inconvenience to the public and/or to vehicle and pedestrian traffic. For this purpose, he shall, inter alia, provide and maintain sufficient Temporary Works, road signs, lights, barricades, fencing and guarding as may be necessary or required by any act, regulation, including *the Occupational Health and Safety Act (Act 85 of 1993)*, South African Road Traffic Signs Manual, or statutory authority.

8.1.2 Pollution prevention and interferences

8.1.2 All operations necessary for the execution of the Works shall, as far as compliance with the requirements of the Contract permits, be carried out in such a manner as not to cause Unnecessary noise or pollution, or to interfere unnecessarily or improperly with, or encroach upon the use of public services, or access to, use and occupation of public or private roads and footpaths or properties, whether in the possession of the Employer or of any other person.

8.1.3 Excessive loads and traffic

8.1.3 The Contractor shall use every reasonable means to prevent any of the roads or bridges to, or in the vicinity of the Site from being subjected to damage by excessive loads or disruption due to excessive traffic occasioned by the transport arrangements of the Contractor.

8.1.4 Indemnity by Contractor

8.1.4 The Contractor indemnifies the Employer against any liability arising out of the Contractor's non-compliance with his obligations in terms of this Clause.

8.1.5 Prices for protection of the works

8.1.5 The Contractor shall be deemed to have allowed in his rates and/or prices for all obligations in terms of this Clause except insofar as provision is made in the Pricing Data (*viz in the Preliminary & General section of the Pricing Schedule/data*) for payment in respect of specific terms pertaining to these obligations.

8.2 Care of the Works

8.2.1 Care of the Works

8.2.1 From the date on which the Site is handed over to the Contractor to the date of the issue of a Certificate of Completion, the Contractor shall take full responsibility for the care of the Works and of all Plant intended for incorporation into the Works and materials on the Site intended for incorporation into the Works;
Provided that, if in terms of Clause 5.14.7 the Employer's Agent shall issue a Certificate of Completion in respect of any part of the Works, the Contractor shall cease to be responsible for the care of such part and responsibility therefor shall pass to the Employer.

8.2.2 Damage or physical loss

- 8.2.2 If there is any damage to the Works, or any part thereof, or to the said Plant or materials, or physical loss occurs:
- 8.2.2.1 From any cause whatsoever (other than the excepted risks defined in Clause 8.3.1) while the Contractor is responsible for the care thereof, the Contractor shall, at his own cost, repair and make good the same so that, at the issue of the Certificate of Completion, the Works or the portions of the Works to which the Certificate relates shall be in good order and condition, and in conformity with the Contract.
- 8.2.2.2 Arising from any of the excepted risks, referred to in Clause 8.3, the Contractor shall, if ordered by the Employer's Agent, repair and make good the same and the cost of such work shall be valued and paid in accordance with Clause 6.4.
- 8.2.2.3 Caused by the Contractor himself in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 7.8 or in respect of work to be completed in terms of Clause 5.14.4, the Contractor shall be liable for such damage or loss.

8.3 Excepted risks

8.3.1 Excepted risks

- 8.3.1 The excepted risks are risks of damage or physical loss or any other loss caused by or arising directly or indirectly as a result or consequence of:
- 8.3.1.1 War, invasion, act of foreign enemies, hostilities or warlike operations (whether war be declared or not) or civil war,
- 8.3.1.2 Insurrection, rebellion or revolution,
- 8.3.1.3 Mutiny, military uprising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege,
- 8.3.1.4 Any event which, at the closing date of the tenders, is defined as a risk in terms of insurance offered by the South African Special Risks Insurance Association,
- 8.3.1.5 Any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, as amended,
- 8.3.1.6 The impact of meteorites,
- 8.3.1.7 Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- 8.3.1.8 Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuels,
- 8.3.1.9 The use of or occupation by the Employer or his employees or agents or other contractors (not employed by the Contractor) of any part of the Works,
- 8.3.1.10 The design, specification or instruction of the Employer's Agent, Employer or any of their employees or agents, or defects in the materials supplied by the Employer for incorporation in the Works,
- 8.3.1.11 The confiscation, commandeering, nationalisation, requisition or destruction of or damage to property by an order of government, or any public or local authority,
- 8.3.1.12 The fact that the value of materials, as supplied by the Employer for incorporation in the Works, exceeds the value thereof as specified by or on behalf of the Employer at the time of delivery thereof by the Employer.

8.4 Indemnifications

8.4.1 Injury to persons and damage to property

- 8.4.1 The Contractor:
- 8.4.1.1 Indemnifies the Employer against any liability in respect of damage to, or physical loss of the property of any person, or injury to or death of any person, and
- 8.4.1.2 Shall be liable to the Employer for damages to or physical loss of all property of the Employer that is not part of the Works, nor of the Site, arising directly from the execution of the Works; Provided that nothing herein constrained shall render the Contractor liable in respect of:
- 8.4.1.3 The permanent use or occupation of land by reason of the Works or any part thereof,
- 8.4.1.4 The right of the Employer to construct the Works or any part thereof over under in or through any land,

- 8.4.1.5 Any nuisance, disturbance or interference arising necessarily by reason of the construction of the Works,
- 8.4.1.6 Interference, whether temporary or permanent, with any servitude or any other right which is the unavoidable result of the construction of the Works in accordance with the Contract,
- 8.4.1.7 Injuries or damage to persons or property resulting from any act, omission or neglect of the Employer, his agents, employees or other contractors (not being employed by the Contractor), or
- 8.4.1.8 Any agreement by the Employer to pay any sum by way of indemnity or otherwise, unless liability for such payment would have existed in the absence of such agreement.

8.4.2 Indemnity by Employer

- 8.4.2 The Employer indemnifies the Contractor against all liability in respect of the matters referred to in the proviso to Clause 8.4.1.

8.5 Reporting accidents

8.5.1 Reporting of accidents

- 8.5.1 In addition to any statutory obligations, the Contractor shall, as soon as practicable, report to the Employer's Agent every occurrence on the Works or the Site which causes damage to property, or injury or death to persons. If required by the Employer's Agent, the Contractor shall submit a written report to the Employer's Agent within 48 hours of such requirement, setting out full details of the occurrence. The Employer's Agent shall have the right to make any enquiries, either on the Site or elsewhere, as to the cause and results of any such occurrence and the Contractor shall make available to the Employer's Agent the necessary facilities for carrying out such enquiries.

8.6 Insurances

8.6.1 Insurances

- 8.6.1 Except if provided otherwise in the Contract Data, the Contractor, without limiting his obligations in terms of the Contract, shall as part of the documentation required before Commencement with Works execution in accordance with Clause 5.3.1, at his own cost, effect and maintain the following insurances in the joint names of the Employer and the Contractor:
 - 8.6.1.1 Insurance of the Works, Plant intended for incorporation in the Works, and of all materials on the Site intended for incorporation in the Works against damage or physical loss arising from whatever cause (except the causes set out in Clause 8.3.1), for the period for which the Contractor is responsible for the Works in terms of Clause 8.2.1, and for a sum insured which shall be the aggregate of:
 - 8.6.1.1.1 The Contract Price,
 - 8.6.1.1.2 The amount stated in the Contract Data to cover the value of Plant and materials supplied by the Employer for incorporation in the Works and not included in the Contract Price, and
 - 8.6.1.1.3 The amount stated in the Contract Data to cover professional fees, not included in the Contract Price, payable in respect of the repair or reinstatement of damage to the Works or said movables.
 - 8.6.1.2 A Coupon Policy for Special Risks Insurance issued by the South African Special Risks Insurance Association unless otherwise stated in the Contract Data.
 - 8.6.1.3 Liability insurance that covers the Employer as well as the Contractor against their respective liability for the death of, or injury to any person, or loss of, or damage to any property (other than property while it is insured in terms of Clause 8.6.1.1) arising from or in the course of the fulfilment of the Contract, from the Commencement Date to the date of the end of the Defects Liability Period, if there is one, or otherwise to the issue of the Certificate of Completion for a limit of indemnity stated in the Contract Data;
Provided that the insurance shall include a cross-liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insured parties. Where the execution of the Works involves the risk of removal of or interference with support to adjoining properties including land or structures, or any structures to be altered or added to, the Contractor shall effect and maintain insurance against the death or injury to persons, or damage to such property

consequent on such removal or interference with support, until such portion of the Works has been completed.

8.6.1.5 Such other additional or varied insurances as are stated in the Contract Data.

8.6.2 Liability for deductibles

8.6.2 The Contractor shall be liable for the payment of the deductibles in respect of each claim settlement in terms of the policies effected by the Contractor.

8.6.3 Requirements relating to subcontractors

8.6.3 In respect of subcontractors, the Contractor shall be deemed to have complied with the provisions of the requirements relating to insurance by ensuring that the subcontractors have effected such insurance.

8.6.4 Contractor to effect insurances obtainable

8.6.4 Save as otherwise provided in the Contract, nothing herein contained shall oblige the Contractor to effect any insurance which is not generally obtainable from a registered insurer in South Africa.

8.6.5 Employer to approve insurance policy

8.6.5 Save as otherwise provided in the Contract Data, the insurances referred to in Clause 8.6.1 shall be effected with an insurance company registered in South Africa and the terms thereof shall be subject to approval by the Employer, which approval shall not be unreasonably policy withheld.

8.6.5 Contractor to produce proof of payment

8.6.6 The Contractor shall produce to the Employer's Agent the policies by which the insurances are effected and proof of the due payment of all premiums thereunder and of the continuity of the policies for the required period *no later than 14 days before site site handover*.

8.6.7 *Remedy on Contractors failure to insure*

9. TERMINATION OF CONTRACT

9.1 Termination of Contract

9.1.1 Termination due to external events

9.1.1 If during the currency of the Contract, the accepted risks set out in clause 8.3.1.1 occur in any part of the world, and if any such event shall materially affect the carrying out or cost of the Works, the Contractor shall, unless and until the Contract is terminated in terms of this Clause, endeavour to complete the execution of the Works to the best of his ability; Provided that the Employer shall be entitled, at any time after such event, to terminate the Contract by giving written notice to the Contractor and, upon such notice being given, the Contract shall (save as to the rights of the parties under this Clause) terminate forthwith but without prejudice to the rights of either party in respect of any antecedent breach thereof.

9.1.2 Termination due to internal events

9.1.2 If a state of emergency is declared by the Government, or if riot, commotion, politically motivated sabotage, acts of terrorism or disorder occur, and if any such event beyond the control of the Contractor shall materially affect the execution of the Works, or the supply of labour or materials, or physically interfere with access to the Site or constitute a material risk to persons or property associated with the Contract, the Contractor shall, unless and until the Contract is terminated in terms of this Clause, endeavour to complete the execution of the Works to the best of his ability; Provided that:

9.1.2.1 Either the Employer or the Contractor shall, if such state of affairs continues for a period of at least 20 consecutive working days or for two or more periods aggregating not less than 40 working days in any period of six months, be entitled to terminate the Contract by written notice to the other party and, upon such notice being given, the Contract shall (save as to the rights of the parties under this Clause) terminate forthwith but without prejudice to the rights of either party in respect of any antecedent breach thereof; or

- 9.1.2.2 If the Employer shall undertake, in writing, to bear any resultant additional costs involved in continuing the Works, the Contractor shall not exercise his right to terminate the Contract.

9.1.3 Existing structure destroyed

- 9.1.3 Where the Contract is for alterations and/or additions to an existing structure and such existing structure is substantially **** damaged**, the Employer may terminate the Contract.

9.1.4 Increased costs

- 9.1.4 In the circumstances referred to in Clauses 9.1.1, 9.1.2 or 9.1.3, and whether or not the Contract is terminated under the provisions of this Clause, the Contractor shall be entitled to payment of any increased cost of or incidental to the execution of the Works which is specifically attributable to, or consequent upon the circumstances defined in Clauses 9.1.1, 9.1.2 or 9.1.3; Provided that the Contractor shall, as soon as any such increase in Cost comes to his knowledge, at least within 14 days after becoming aware of such increase in Cost, notify the Employer's Agent thereof, in writing. The provisions of Clause 6.4 shall then apply, with the necessary changes.

9.1.5 Payment if Contract is terminated

- 9.1.5 If the Contract is terminated on any account in terms of this Clause, the Contractor shall be paid by the Employer (insofar as such amounts or items have not already been covered by payments on account made to the Contractor) for all measured work executed prior to the date of termination, the amount (without retention), payable in terms of the Contract and, in addition:
- 9.1.5.1 The amounts payable in respect of any General Items for the work or service comprised therein that has been carried out or performed and for work and servicing that has been partially carried out or performed, a proper proportion, as certified by the Employer's Agent, of the General Items.
- 9.1.5.2 The cost of materials or goods reasonably ordered for the Works which shall have been delivered to the Contractor, or of which the Contractor is legally liable to accept delivery (such Plant, materials or goods becoming the property of the Employer upon such payment by him), *as per 6.10.2.1, 6.10.2.2 and 6.10.2.3.*
- 9.1.5.3 A sum to be certified by the Employer's Agent as being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works, insofar as such expenditure shall not have been covered by the payments previously referred to in Clause 9.1.5,
- 9.1.5.4 The expense of removal from the Site of Construction Equipment and Temporary Works as are on the Site at the date of termination, and
- 9.1.5.5 Any additional sum payable under the provisions of Clause 9.1.4.
- 9.1.5.6 *The cost for the actual or planned hire, transport and delivery of plant to site of which the Contractor is legally liable to accept delivery, on the basis of proven costs.*

9.1.6 Over-riding provisions

- 9.1.6 The provisions of this Clause shall, in the circumstances described in Clause 9.1.1, 9.1.2 and 9.1.3 apply notwithstanding anything to the contrary contained elsewhere in the Contract.

9.2 Termination by Employer

9.2.1 Termination by Employer

- 9.2.1 If:
- 9.2.1.1 Application is made for the sequestration of the Contractor's estate, or if the Contractor publishes a notice of surrender of his estate, or presents a petition for the acceptance of the surrender of his estate as insolvent, or (being a company or close corporation) goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction),
- 9.2.1.2 The Contractor makes a compromise with his creditors, or assigns in favour of his creditors, or agrees to carry out the Contract under the supervision of a committee representing his creditors, or if the Contractor assigns the Contract without having first obtained the Employer's written consent, or if execution is levied on his goods, or
- 9.2.1.3 After giving effect to clause 3.2.2 the Employer's Agent certifies, in writing, to the Employer and to the Contractor, with specific reference to this Clause, that the Contractor:
- 9.2.1.3.1 Has abandoned the Contract, or

- 9.2.1.3.2 Has failed in terms of clause 5.3.2, to submit documentation time, or to submit acceptable documentation; or
- 9.2.1.3.3 Has failed to commence the Works in terms of Clause 5.3 hereof, or has suspended the progress of the Works (other than in terms of clause 5.11.1) for fourteen (14) consecutive days after receiving from the Employer's Agent written notice to proceed, or
- 9.2.1.3.4 Has failed to proceed with the Works in accordance with the approved programme or in the absence of an approved programme, in the Employer's Agent's opinion, or
- 9.2.1.3.5 Has failed to remove Plant or materials from the Site or to demolish and redo work within fourteen (14) days after receiving from the Employer's Agent written notice that the said Plant, materials or work have been condemned and rejected by the Employer's Agent in terms of these conditions, or
- 9.2.1.3.6 Is not executing the Works in accordance with the Contract, or is neglecting to carry out his obligations under the Contract, or
- 9.2.1.3.7 Anyone, on his behalf has paid, offered or offer as payment to any person in the employ of the Employer or to the Employer's Agent, or any person in the employ of the Employer's Agent, a gratuity or reward or commission, or
- 9.2.1.3.8 Has furnished inaccurate information in the returnable documents completed at tender stage and forming part of the Contract,

then the Employer may, after giving fourteen (14) days written notice to the Contractor, (with specific reference to this Clause) to remedy the default, terminate the Contract and order the Contractor to vacate the Site and hand it over to the Employer.

The Employer may then enter the Site and the Works and expel the Contractor therefrom without thereby affecting the rights and powers conferred on the Employer or the Employer's Agent by the Contract. The Employer may complete the Works himself or may employ another contractor to complete the Works, and the Employer, or such other contractor, may use for such completion as much of the Construction Equipment, Temporary Works and materials brought onto the Site by the Contractor as the Employer may think proper. If, Clause 9.2.1.1 is not applicable, the Employer may at any time sell any of the said Construction Equipment, Temporary Works and unused materials and apply the proceeds of sale towards payment of any sums that may be due or become due to the Employer by the Contractor under the Contract. In such circumstances, the Contractor shall forthwith vacate the Site and shall not be entitled to remain on the Site based on a right of retention until amounts due to him have been paid and neither will the Contractor be entitled to any further payments in terms of this Contract.

9.2.2 Payment to complete the work

- 9.2.2 Should the amounts the Employer must pay to complete the Works exceed the sum that would have been payable to the Contractor on due completion by him, the Contractor shall, upon demand, pay to the Employer the difference. This sum shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly:
Provided that, should the Contractor on demand not pay the amount of such excess to the Employer, such sum may be determined and deducted by the Employer from any sum due to or that may become due to the Contractor under this or any previous or subsequent contract between the Contractor and the Employer.

9.2.3 Notices to trustee/liquidator

- 9.2.3 If the provisions of Clause 9.2.1.1 apply, any notice or order referred to in this Clause shall be delivered to the trustee or liquidator and the rights and obligations vested in or binding on the Contractor shall vest in or be binding on the estate under sequestration or liquidation.

9.3 Termination by Contractor

9.3.1 Termination of Contract by Contractor

- 9.3.1 In the event that the Employer:
 - 9.3.1.1 Has repudiated the Contract; or
 - 9.3.1.2 Has failed to pay the Contractor the amount due in terms of any payment certificate issued by the Employer's Agent, within the time of payment provided in the Contract; or
 - 9.3.1.3 Has Interfered with or obstructing the issue of any certificate; or
 - 9.3.1.4 Has had his estate sequestrated (provisionally or finally) or, being a company or close corporation, going into liquidation (provisionally or finally), or

- 9.3.1.5 Has assigned the Contract without the written consent of the Contractor, the Contractor may, after giving fourteen (14) days written notice to the Employer (with specific reference to this clause) to remedy the default, terminate the Contract.

9.3.2 Removal of items and payment to Contractor

- 9.3.2 Upon such termination:

9.3.2.1 All the provisions of the Contract, including this Clause, shall continue to apply for the purpose of:

9.3.2.1.1 Resolving any dispute, and

9.3.2.1.2 Determining the amounts payable by either the Employer or the Contractor to the other of them.

9.3.2.2 The ownership of Plant and unused materials brought onto the Site by the Contractor, and for which the Employer has not made any payment, shall revert to the Contractor and he shall, with all reasonable dispatch, remove from the Site such Plant, materials and all Construction Equipment and Temporary Works, without prejudice to the exercise of any lien the Contractor may have acquired over the Employer's property.

9.3.2.3 The Employer shall be under the same obligations to the Contractor with regard to payment as if the Contract had been terminated under the provisions of Clause 9.1 but, in addition to the payment specified in Clause 9.1.5, the Employer shall pay to the Contractor the amount of any additional loss or damage to the Contractor arising out of or in connection with or in consequence of such termination.

9.3.3 Other rights of the Contractor

9.3.3 Nothing in this Clause shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies specified in this Clause, any other rights or remedies to which the Contractor may be entitled under the Contract or common law.

9.3.4 Notice to trustee/liquidator

9.3.4 If the estate of the Employer shall have been sequestered (provisionally or finally) or if the Employer, being a company or close corporation, is liquidated (provisionally or finally), any notice referred to in this Clause shall be delivered to the trustee, or provisional trustee, or the liquidator, or provisional liquidator, and all rights vesting in or binding on the Employer shall vest in or be binding on the estate under sequestration or liquidation.

10. CLAIMS AND DISPUTES

10.1 Contractor's claim

10.1.1 Contractor's claim

10.1.1 The following provisions shall apply to any claim by the Contractor for an extension of time for the Practical Completion of the Permanent Works in terms of Clause 5.12, or in terms of any Clause that refers to Clause 10.1 for additional payment or compensation:

10.1.1.1 The Contractor shall, within 28 days after the circumstance, event, act or omission giving rise to such a claim has arisen or occurred, *consult the Employer's Agent about his intention to make, and, after consultation, deliver to the Employer's Agent a written claim, referring to this Clause and setting out:*

10.1.1.1 (1) The particulars of the circumstance, event, act or omission giving rise to the claim concerned,

10.1.1.1 (2) The provisions of the Contract on which he bases the claim,

10.1.1.1 (3) The length of the extension of time, if any, claimed and the basis of calculation thereof, and

10.1.1.1 (4) The amount of money claimed and the basis of calculation thereof.

10.1.1.2 If, by reason of the nature and circumstances of the claim, the Contractor cannot reasonably comply with all or any of the provisions of Clause 10.1.1.1 within the said period of 28 days, he shall:

10.1.1.2. (1) Within the said period of 28 days notify the Employer's Agent, in writing, of his intention to make the claim and comply with such of the requirements of Clause 10.1.1.1 as he reasonably can, and

10.1.1.2. (2) As soon as is practicable, comply with such of the requirements of Clause 10.1.1.1 as have not yet been complied with.

10.1.1.3 If the events or circumstances relating to the claim are of an ongoing nature, the Contractor shall, in addition to delivering the said notice within 28 days, each month deliver to the Employer's Agent, in writing, updated particulars required in terms of Clause 10.1.1.1 and, within 28 days after the end of the events or circumstances, deliver his final claim.

10.1.2 Extended period for claim

10.1.2 If, in respect of any claim, the Contractor did not comply with the provisions of Clause 10.1.1 because he was not and could not reasonably have been aware of the implications of the facts or circumstances concerned, the period of 28 days referred to in Clause 10.1.1 shall commence to run from the date when he should reasonably have become so aware. The cost and time of all work done in this regard by the Contractor prior to giving such notice shall be deemed to be covered by the rates and/or prices set out in the Pricing Data and the time stated in Contract Data relating to Clause 5.5.1.

10.1.3 Records of facts and circumstance for claim

10.1.3 To properly assess the extent and validity of claims submitted in terms of this Clause, the following provisions shall apply:

10.1.3.1 All facts and circumstances relating to the claims shall be circumstances investigated as and when they occur or arise. For this purpose, the Contractor shall deliver to the Employer's Agent, records in a form approved by the Employer's Agent, of all the facts and circumstances which the Contractor considers relevant and wishes to rely upon in support of his claims, including details of all Construction Equipment, labour and materials relevant to each claim. Such records shall be submitted promptly after the occurrence of the event giving rise to the claim.

10.1.3.2 The Employer's Agent may record facts and circumstances, additional to those recorded by the Contractor, he considers relevant and the Contractor shall, for this purpose, supply the Employer's Agent with all the information he may require.

10.1.3.3 The Employer's Agent and the Contractor shall, at the time of recording in terms of Clauses 10.1.3.1 and 10.1.3.2, set out, in writing, signed by each party and delivered to each other, their respective agreement or disagreement with regard to the correctness of the matters recorded.

10.1.3.4 Each record of an agreed fact in terms of Clause 10.1.3.3 shall in any dispute be conclusive evidence of the fact concerned.

10.1.3.5 For the purpose of this Clause, information arising from a technical investigation or analysis undertaken after the events that gave rise to the claim have occurred, shall **not** be regarded as facts or circumstances that are **required** to be recorded in terms of this Clause.

10.1.3.6 The Employer, the Employer's Agent and the Contractor shall not in any proceedings in accordance with Clauses 10.3 to 10.11 be entitled to give or lead evidence of or rely on any fact or circumstance not recorded in terms of this Clause, if the other party to the dispute is prejudiced by such non-recording of the facts.

10.1.4 Contractors failure to comply with notice period

10.1.4 If, in respect of any claim to which this Clause refers, the Contractor fails to comply with the 28 day notice period in Clause 10.1.1, as read with Clause 10.1.2, or does not deliver his final claim within 28 days after the end of the events or circumstances, the Due Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged of all liability in connection with the claim.

10.1.5 Employer's Agent's ruling on Contractor's claim

10.1.5 Unless otherwise provided in the Contract, the Employer's Agent shall, within 28 days after the Contractor has delivered his claim in terms of Clause 10.1.1 as read with Clause 10.1.2, give effect to Clause 3.1.2 and deliver to the Contractor and the Employer his written and adequately reasoned ruling on the claim (referring specifically to this Clause). The amount thereof, if any, allowed by the Employer's Agent shall be included to the credit of the Contractor *in one of the next payment certificates, provided that the said period of 28 days may be extended if so agreed between the Contractor and the Employer's Agent,*

10.2 Dissatisfaction claim

10.2.1 Dissatisfaction Claim

10.2.1 In respect of any matter arising out of or in connection with the Contract, which is not required to be dealt with in terms of Clause 10.1, the Contractor or the Employer shall have the right to deliver a written

dissatisfaction claim to the Employer's Agent. This written claim shall be supported by particulars and substantiated.

10.2.2 Failure to claim dissatisfaction

10.2.2 If, in respect of any matter arising out of or in connection with the Contract, which is not required to be dealt with in terms of Clause 10.1, the Contractor or the Employer fails to submit a claim within 28 days after the cause of dissatisfaction, he shall have no further right to raise any dissatisfaction on such matter.

10.2.3 Employer's Agent's ruling on dissatisfaction

10.2.3 The Employer's Agent shall, within 28 days after the Contractor or Employer has delivered the dissatisfaction claim to him, give effect to Clause 3.1.2 and give his adequately reasoned ruling on the dissatisfaction, in writing to the Contractor and the Employer, referring specifically to this Clause. The amount thereof allowed by the Employer's Agent, if any, shall be included to the credit of the Contractor or the Employer in the next payment certificate.

10.3 Dispute notice

10.3.1 Dispute notice

10.3.1 The Contractor or the Employer, hereinafter referred to as the parties, may deliver to the other a written notice, hereinafter referred to as a Dispute Notice, of any dispute arising out of or in connection with the Contract;

Provided that:

10.3.1.1 The dispute arises from an unresolved claim.

10.3.1.2 Reference shall be made to this Clause in the Dispute Notice.

10.3.1.3 A copy of the Dispute Notice shall be delivered to the Employer's Agent.

10.3.1.4 The Dispute Notice shall clearly state the nature of the dispute and the extent of the redress sought.

10.3.1.5 The Dispute Notice shall be delivered within 28 days of the event giving rise to the dispute has arisen. Failing such delivery, the parties shall have no further right to dispute the matter.

10.3.2 Dispute to be referred

10.3.2 If either party shall have given notice in compliance with Clause 10.3.1, the dispute shall be referred immediately to adjudication in terms of referred Clause 10.5, unless amicable settlement is contemplated.

10.3.3 Ruling in full force

10.3.3 In respect of a ruling given by the Employer's Agent, and although the parties may have delivered a Dispute Notice, the ruling shall be in full force and carried into effect unless and until otherwise agreed by both parties, or in terms of an adjudication decision, an arbitration award or court judgement.

10.4 Amicable settlement

10.4.1 Dispute resolution by amicable settlement

10.4.1 The parties may at any time, without prejudice to any other proceedings, agree to settle any claim or any dispute amicably with the help of an impartial third party. Amicable settlement may include any amicable settlement technique as agreed by the parties.

10.4.2 Amicable settlement failure

10.4.2 If the other party rejects the invitation to amicable settlement in writing or does not respond in writing to the invitation within 14 days, or amicable settlement is unsuccessful, ** the dispute shall be resolved by ** court proceedings.

10.4.3 Binding settlement

10.4.3 Amicable settlement shall become final and binding on the parties only to the extent that it is correctly recorded as being agreed by the parties.

10.4.4 *No reference of amicable settlement outcomes*

10.5 Adjudication

10.5.1 *Dispute resolution by standing adjudication*

10.5.2 *Dispute resolution by ad hoc adjudication*

10.5.3 *Rules for adjudication*

10.6 Disagreement with Adjudication Board's decision

10.6.1* Disagreement with Adjudication Board's decision*

10.6.2 *Failure to comply with a decision*

10.6.3 *Failure to give a decision in time*

10.7 Arbitration

10.7.1 *Reference to arbitration*

10.7.2 *Rules for arbitration*

10.7.3 *Reasoned award*

10.8 Court proceedings

10.8.1 Reference to court

10.8.1 If the Contract Data does not provide for the settlement of disputes by *adjudication* or arbitration, and if a dispute is still unresolved, the dispute shall be determined by court proceedings.

10.9 Appointment

10.9.1 Appointment of dispute resolving persons

10.9.1 The dispute resolving person or persons shall be appointed by agreement of the parties. Failing agreement within seven days of either party delivering a request in writing to agree to such appointment, the person or persons shall be nominated, on the application of either party, by the President or his nominee of the South African Institution of Civil Employer's Agenting.

10.10 Common provisions

10.10.1 Contractor's right to court proceedings

10.10.1 Nothing herein contained shall deprive the Contractor of the right to institute immediate court proceedings in respect of failure by the Employer to pay the amount of a payment certificate on its due date, or to pay any amount of retention money on its due date for payment.

10.10.2 Employer's Agent as witness

10.10.2 No ruling given by the Employer's Agent in accordance with the provisions of the Contract shall disqualify him from being called as a witness and giving evidence before the arbitrator or the court on any matter whatsoever relevant to the dispute concerned.

10.10.3 Court's power regarding a ruling or a decision

10.10.3 ****** The court shall have full power to open up, review and revise any ruling, decision, order, instruction, certificate or valuation of the Employer's Agent and to reconsider any *previous agreement made or decision taken in earlier stages of the dispute resolution* relevant to the matter in dispute, and neither party shall be limited in such proceedings before such ****** court to the evidence or arguments put before the Employer's Agent for the purpose of obtaining his ruling, ******

10.11 Continuing validity

10.11.1 Continuing validity

- 10.11.1 Clauses 10.1 to 10.11 are a separate, divisible agreement from the rest of the Contract and shall remain valid and applicable notwithstanding that the Works may have been completed or that the rest of the Contract may be void or voidable, or may have been terminated for any reason.

CONTRACT PRICE ADJUSTMENT SCHEDULE

1. The value of each monthly certificate shall be increased or decreased by the amount obtained by multiplying A_c , defined in Clause 2 of this Schedule, by the Contract Price Adjustment Factor, rounded off to the fourth decimal place, determined according to the formula:

$$(1 - x) \left[\frac{aLt}{L_o} + \frac{bPt}{P_o} + \frac{cMt}{M_o} + \frac{dFT}{F_o} - 1 \right]$$

in which the symbols have the following meaning:

- x is the proportion of A_c which is not subject to adjustment. Unless otherwise stated in the Contract Data, this proportion shall be 0,10.
- a, b, c and d are the coefficients contained in the Contract Data, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of labour, contractors' equipment, material (other than special materials specified in the Contract Data) and fuel respectively. The arithmetical sum of a, b, c and d shall be unity.
- L is the Labour Index and shall be the Consumer Price Index (CPI per province) for the province wherein the larger part of the Site is located, as stated in the Contract Data, and as published in the Statistical News Release, P0141, Table A of Statistics South Africa.
- P is the Plant Index and shall be the Producer Price Index for Civil Employer's Agenting Plant as published in the Statistical News Release P0142.1, Table 12 of Statistics South Africa.
- M is the Materials Index and shall be the Producer Price Index applicable to the industry as stated in the Contract Data and as published in the Statistical News Release P0142.1, Table 11 of Statistics South Africa.
- F is the Fuel Index and shall be the Producer Price Index for Diesel at wholesale level for the area as stated in the Contract Data and as published in the Statistical News Release P0142.1, Table 12 of Statistics South Africa. The suffix 0 denotes the base indices applicable to the base month as stated in the Contract Data.

The suffix t denotes the current indices applicable to the month in which the last day of the period falls to which the relevant monthly statement relates. If any index relevant to any particular certificate is not known at the time when the certificate is prepared, the Employer's Agent shall estimate the value of such index. Any correction which may be necessary when the correct indices become known, shall be made by the Employer's Agent in subsequent payment certificates.

2. For the purposes of calculating the adjustment to the value of the relevant monthly statement, the amount A_c shall be determined by the formula:

$$A_c = T - S - O - E - G - A_p$$

In which formula the symbols shall have the following meaning:

- T is the summation of the total value of:
 - i. General Items
 - ii. work done and the
 - iii. materials on Site

as certified in the monthly statement under consideration without any deduction whatsoever and before any adjustment made in terms of this Schedule.

S is the aggregate of (i), (ii), (iii) and (iv) referred to below and included in T.

- i. the amounts actually expended and substituted for any Prime Cost Sums;
- ii. the value of any work done by Selected Subcontractors;
- iii. the value of any work done against Provisional Sums;
- iv. the value of any extra or additional work;

v. where special arrangements for price adjustments in respect of those amounts were made and recorded at the time the work was ordered.

0 is the value of work included in T and done at new fixed rate, where those rates were not based on labour, contractors' equipment or materials costs in force at the time of tendering. Generally new rates may be based on current costs and deescalated to the base month of the indices, in which case work done at these rates shall not be included in the value of 0.

E is the amount included in T and paid for any daywork executed at cost plus percentage allowances as set out in General Conditions of Contract Clause 6.5.1.2. G is the amount included in T for materials classified and dealt with as special materials .

Ap is the summation of all Ac amounts determined in terms of Clause 2 of this Schedule for all monthly statements preceding in time the monthly statement under consideration.

3. Save only for additional work or variations ordered to be carried out after the time for completion, the increase or decrease applied to monthly statement in terms of this. Clause relating to work done or materials supplied after the time for completion shall be half the factor calculated by inserting the formula referred to in Clause 1 hereof the indices Lt, Pt, Mt and Ft applicable at the Due Completion Date.
- 4.1 The price of each special material specified in the Contact Data shall be increased or decreased by the net amount of any variation incurred after the date of tender on the basis set out in the Contract Data, provided that any claim for adjustment in terms hereof shall be substantiated by the submission of acceptable invoices and any other supporting documents that the Employer's Agent considers necessary for the purpose, and provided also that no further adjustment be permitted to the price of any special material after the time for completion unless such material forms part of any additional work or variation ordered to be carried out after that date.
- 4.2 For the purposes of clause 4.1 hereof, the net amount of any variations in respect of a particular special material shall be calculated by multiplying the difference between the rate or price entered in the Contract Data by the Contractor for that material and the equivalent rate or price actually paid by the Contractor for the material by the quantity of the material in question.
5. If more than one month intervenes between the month applicable to any monthly statement and the month applicable to the immediately succeeding monthly statement, then the indices Lt, Pt, Mt and Ft applicable to such succeeding monthly statement shall each be the arithmetic mean, rounded off to the second decimal place, of the relevant indices applicable to the month of measurement and to such intervening months.

SPECIAL CONDITIONS OF CONTRACT

If one or more of the Special Conditions clauses would contradict, or seem to contradict, or in any way would (seem to) deviate from a corresponding clause of the GCC 2015, the Special Conditions one(s) will prevail.

1. CONSTRUCTION PERIOD AND DUE COMPLETION DATE

1.1. The construction period for the Works are 6 months, starting with the site hand over

2. COMPETENCY OF THE SERVICE PROVIDER

2.1 For evaluation processes, the Department shall apply the evaluation criteria as outlined in the Bid Evaluation Criteria of this bid.

2.2 It shall be vital for the appointed supplier to have sufficient financial resources and capacity to finance and execute as per terms and conditions of the contract.

2.3 If the Bidder is not a specialist in one or more of the required specialist Works, if any, he/she should appoint a specialist to assist with, or execute those Works, and provide details of the specialist in Appendix D (Sub-contractors)

3. COMPULSORY SITE BRIEFING

3.1 A site-briefing meeting will be held with prospective Bidders. Attendance of the briefing is compulsory and non-attendance shall invalidate any bid. The date and time of the meeting will be

published in the Bid Advertisement or, in the case of a quote, be communicated when the prospective service provider is invited to quote.

4. ALTERNATIVE SPECIFICATIONS

- 4.1 If the Pricing Schedule makes some allowance for alternative specifications for some items, these should be at least equivalent to the ones provided by the Department. Apart from these, no alternative specifications shall be considered.

5. INVOICES

- 5.1. All invoices submitted by the Contractor must be original and be accompanied by payment certificates, indicating the work done, the amount of tax charged (if applicable) and the total Invoice amount.
- 5.2. An invoice shall be in the currency of the Republic of South Africa and shall contain the following particulars:
- 5.2.1 The name, address and registration number of the supplier;
 - 5.1.2 The name and address of the recipient;
 - 5.1.3 An individual serialized number and the date upon which the tax invoice is issued;
 - 5.1.4 A description of the goods or services supplied;
 - 5.1.5 The payment certificate;
 - 5.1.6 The value of the payment certificate amount, the amount of tax charged and the description of the works completed;
 - 5.1.7 The purchase order number (where applicable) and the name of the project must appear on an invoice

6. IRREGULARITIES

- 6.1. Companies are encouraged to advise the Department timeously of any possible irregularities which might come to their notice in connection with this or other contracts

7. PAYMENT FOR SUPPLIES AND SERVICES

- 7.1. A contractor shall be paid by the Department in accordance with the services rendered as per the payment certificate.
- 7.2. There will be no payment for materials delivered to site if they have not been incorporated or installed or otherwise been made part of the permanent works. A deviation can only be considered if the Employer's Agent has approved a written request from the Contractor for a special arrangement in this regards, prior to the delivery of the materials to site, as per GCC clause 6.10.2.
- 7.3. Any query concerning the non-payment of accounts must be directed to the Department. The following protocol shall apply if accounts are queried:

- (1) Contact must be made with the officer-in-charge of the District Office;
- (2) If there is no response from the District Office, the Director: Finance must be contacted;

- 7.4. Information as contained on the Central Suppliers Database must be valid/correct. Non-compliance with Tax Requirements shall affect payment.

8. QUALITY CONTROL/ TESTING OF PRODUCTS

- 8.1. The Department reserves the right to inspect and verify the quality and specifications of the supplied materials and equipment, as well as other items listed on the Bill of Quantities, **before** construction and/or installation. In case of deviations in terms of dimensions, strength, numbers or otherwise, the Contractor shall replace these goods for the correct ones at his/her own expense.
- 8.2. The same replacement obligation to the Contractor would apply during installation and during and after commissioning.
- 8.3. In the case of sustained or repeated non-adherence to the specifications of the materials and/or equipment, as well as in the case of general negligence during the implementation process, the contract may be cancelled. The Department will in such cases seek compensation from the contractor for the estimated costs for completion.
- 8.4. In cases of deliberate negligence or unwillingness to adhere to the Departmental specifications, the Service provider will be reported to the Provincial and/or National Treasury for listing on the Restricted section of the Central Suppliers database.

9. UNSATISFACTORY PERFORMANCE

- 9.1. Unsatisfactory performance occurs when performance is not in accordance with the contract conditions.
- 9.2. The Departmental official shall warn the contractor in writing that action shall be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time (7 days minimum).
- 9.3. If the Contractor fails to commence the Works or to proceed with and complete the Works in compliance with the projected timeframes, the Head of Department or his/her representative shall take action in terms of its his/her delegated powers and adopt and exercise one of the following courses wholly or partly, viz: -
- 1.1.1. To direct the Contractor, in writing, on any day named therein to suspend and discontinue the execution of the Works, and to withdraw himself and his workmen from the said Site or Sites,
 - 1.1.2. To make a recommendation to the Accounting Officer for cancellation of the contract concerned.
- 1.2. To Contract or Contracts by calling for Bids or otherwise with any other Contractor or Contractors for the completion of the Works, or any part thereof, at such times and upon such terms as to the Department shall deem best.
- 1.3. In relation to the foregoing provisions the Department shall charge any sums of money which may be paid by the Department for completing the said Contract against the Contractor and if such amount shall exceed this Contract, then the Department shall have the right to recover such excess or any balance thereof from the Contractor by legal proceedings.
- 1.4. When correspondence is addressed to the contractor, reference shall be made to the contract number/ item number/s and an explanation of the complaint.

10. SERVICE LEVEL AGREEMENT

- 10.1. The successful Bidder and the Department will sign a Service Level Agreement (SLA) prior to commencement of works. A proposed programme of works must be provided by the contractor for the approval of the Engineer within two weeks after site handover.
- 10.2. The *SAICE General Conditions of Contract 2015* as amended, these *Special Terms and Conditions (STC)*, the *Standard Technical Specifications (STS)* and the *Project Particular specifications (PPS)* as listed in this bid document, together with the *Drawings*, are deemed to form part of the SLA.

11. COMMENCEMENT OF THE WORK

- 11.1. Site establishment must start within two (2) weeks, and the actual works within three weeks after hand-over of the site, provided that;
- 11.1.1. The SLA has been signed;
- 11.1.2. An official order has been issued;
- 11.1.3. The contractor is in possession of all relevant documentation required for works execution;
- 11.1.4. No exceptional circumstances such as inclement weather or other outside the control of either party to the contract prevail.
- 11.1.5. All planning permission for the site and buildings has been obtained;
- 11.1.6. The contractor has submitted the security document as per GCC 6.2.1 (if applicable).
- 11.2. In case work has not commenced within two (2) weeks of the site hand-over and no attenuating circumstances for the delay can be provided, the Department reserves itself the right to terminate the contract as per GCC 2015 9.2.1.

12. SITE HANDOVER TO THE CONTRACTOR

- 12.1. The Department will organize a site hand-over to the contractor who will then be introduced to the project stakeholders and participants.
- 12.2. The site will be handed back after the issuing of a Certificate of Completion to the Contractor when after a final inspection by the Engineer no outstanding patent defects are found.
- 12.3. The Contractor will control the site for the contract duration. Only the Contractor's own employees, Contractor's local labour and Departmental Representatives will be allowed on site.
- 12.4. The Contractor is responsible of the administration, control and security on the site at all times during the contract duration.

13. WATER AND POWER

- 13.1. The Contractor shall make the necessary arrangements for the provision of any water and power. No payment will be made for the provision or use of these services and the cost of these shall be included in the Preliminary & General section of the Bid/quoted amount.

14. LOCATION OF CAMP

- 14.1 The Contractor's camp may be erected on the site of the works but must meet the approval of the Engineer, project beneficiaries and landowners.
- 14.2 No persons other than a night watchman may sleep in the camp, without the approval of the local relevant Stakeholder.

15. HOUSING OF CONTRACTOR'S EMPLOYEES

- 15.1. The Contractor shall make his own arrangement for housing, payment and feeding his employees and transporting them to and from the site. However, it may be possible to arrange temporary local accommodation for the Contractor's staff with the participants.
- 15.2. The Contractor is in all respects responsible for the housing and transporting of his employees, and for the arrangement thereof, and no extension of time due to any delays resulting from this, will be granted.

16. LABOUR SOURCE & CAPACITY

- 16.1. The Contractor will be required to satisfy the Department that a sufficient and experienced labor force is employed or that sufficient experienced labour can be acquired to complete the services and produce an acceptable quality of workmanship.
- 16.2. The contractor is encouraged to source labour from the project participants or local community. The Contractor and the Departmental representative (Engineer or local Agricultural adviser) may negotiate with the participants in this regard to establish all the conditions for the utilization of the local labour.
- 16.3. If applicable, the contractor is required to comply with any existing Expanded Public Work Projects (EPWP) prescriptions that may exist concerning the creation of job opportunities during the implementation of the Works.
- 16.4. The Contractor will be responsible for all hiring, payment, housing and transport of all labour used for the duration of the contract.

17. SECURITY & RISK

- 17.1. No one shall be allowed on the construction site after normal working hours except for the necessary security personnel.
- 17.2. The Contractor shall also be responsible for safeguarding all plants, machinery, equipment and materials on site. The Engineer shall not be responsible for any lost, damaged or stolen property

or materials. Should any of these situations arise, no allocations will be made in terms of finances or time.

18. MATERIALS: DELIVERY, ON & OFF-LOADING, STORAGE & RESPONSIBILITY

18.1. The Contractor shall be responsible for the safe delivery, loading, off-loading, handling and storage of any equipment and materials on site.

18.2. All equipment, materials and plant stored on site must be suitably protected against damage or loss by theft or otherwise.

18.3. The Contractor shall remain fully responsible for all material and plant etc. until the completed works and site have been officially handed over.

19. EXISTING ROADS, MUNICIPAL PAVEMENTS, ETC.

19.1. The Contractor is advised that he will be held responsible for any damage to the existing pavings, roads, municipal pavements, fences, boundary walls, etc., and will have to repair such damage at his expense.

20. DAMAGE TO PROPERTY

20.1. If the Contractor or his/her employees, while engaged in the execution of the contract, shall break, deface, injure, destroy or allow to fall into disrepair any part of the Works or property belonging to the Department, or any private property including: buildings, pavings, roads, fences, walls or grounds contiguous to the premises of the Department on which he or they may be employed, the Contractor will be required to repair, in a perfect and workmanlike manner, at own expense all damage to the approval of the Department. The Completion Certificate will not be issued until the Department is satisfied that all necessary remedial work has been satisfactorily completed

20.2. The Contractor shall take every precaution against damage or nuisance being caused by dust both to the properties of the Department and all surrounding properties and shall indemnify the Department against any claim that might arise there from.

21. UNDERGROUND CABLES AND PIPES

21.1. If such services are discovered, immediate notification must be made to the Department and all work in the vicinity of such cables, pipes, etc., shall cease until safe to proceed.

21.2. Should the Contractor damage underground cable or pipes, such damage shall be repaired as soon and safely as possible by the Contractor.

21.3. The cost of making good such damage will be met by the Contractor as this must be covered by the Contractors works insurance.

22. DAILY RAINFALL RECORDS

22.1. Submission of rainfall figures is required for the granting of permission of extending the contract period on the basis of inclement weather. If none are kept, the Engineer is under no obligation to grant extension of the completion period for inclement weather.

23. INSPECTION OF WORK

23.1. The Departmental representative may at all reasonable times have access to the site where work is being executed for inspection purposes.

27.1 The Engineer may request that evidence of the quality or strength of any materials be supplied by the contractor wherever necessary.

24. NOTICE OF COVERING WORK

- 24.1. The Contractor shall give due notice to the engineer whenever any work or materials are intended to be covered in with earth or otherwise in order that their correct dimensions and quality may be ascertained before being covered.
- 24.2. If any such work or materials are covered without such notice having been given, the work or materials shall be uncovered at the Contractor's expense on instructions given by the Engineer.

25. SUB-CONTRACTED WORK

- 25.1. The contractor shall not sub-contract the entire contract. The contractor must indicate in *Appendix 1 C – Additional Information: Subcontracted Works* which part(s), if any, (s)he intends to subcontract.
- 25.2. Sub- contracting shall not relieve the contractor from any liability or obligation under the contract and his/her shall be liable for the acts, defaults and neglects of any sub-contractor, his/her agent or employees as fully as if they were the acts, defaults or neglects of the contractor, his agents or employees.

26. INSURANCE

- 26.1. All accepted approved contractors would be required to provide the following insurance's for the project awarded to them:

26.1.1. Insurance against damage, destruction or loss to 50% of the value of the contract.

26.1.2. Public Liability insurance.

26.1.3. All risks (works) policy and Political.

- 26.2. The Contractor shall provide the Engineer with proof that Insurance has been obtained for the contract period.

27. OCCUPATIONAL HEALTH AND SAFETY

- 27.1. Bidders (including those sub-contractors and/or suppliers who are preparing prices/quotations for submission to the main bidder) must ensure that they make adequate financial provision in their bids for full compliance with the *Occupational Health and Safety Act (85/1993): Construction Regulations, 2014*, as published in the *Government Gazette* of 7 February 2014, or later amendments thereto. Financial provision shall therefore be made by each Bidder for, inter alia, the following:

27.1.1. Carrying out and documenting risk assessments of all work to be carried out under the contract.

27.1.2. Preparation of safe work procedures.

27.1.3. Preparation of an H&S plan, discussing it with the Department, and then amending it as agreed.

27.1.4. Preparation of a Project H&S File to include all requirements of Annexure A.

- 27.1.5. Regular updating of all of the foregoing.
 - 27.1.6. Provision of medical certificates of employees.
 - 27.1.7. Provision of PPE and protective clothing for employees
 - 27.1.8. Complying with all H&S requirements for the duration of the contract.
 - 27.1.9. Provision of forced ventilation (as required when working in confined spaces).
 - 27.1.10. The completion and checking of the safety file upon completion of the works and handing it over to the Department.
- 27.2. To enable the Department to appraise the allowances that bidders have made for H&S in their bids, so that he/she can fulfil his/her obligations in terms of Clause 7 of the Construction Regulations, separate items have been included in the Bill of Quantities for Health and Safety.
- 27.3. Failure to submit realistic prices for the scheduled H&S items is likely to prejudice the bid.
- 27.4. The Principal Contractor and Sub-Contractors must submit proof of compliance with the OHS requirements table below with the construction phase H&S plan where applicable.
- 27.5. The successful bidder shall be required to submit the Contractor's Health and Safety Plan as required in terms of Regulation 7 of the Occupational Health and Safety Act 1993 Construction Regulations 2014.
- 27.6. The Contractor shall pay particular attention to watching and warning lighting and must provide any necessary barriers, etc., required for the protection of the public in terms of the Act.

Table 1 ~ OHS Requirements and submission dates

| PAM Item No. | Requirement | OHS Requirement | Submission Date |
|--------------|--|--|--------------------------------------|
| 2.1 | Notification of Intention to Commence Construction / Building Work | Complete Schedule 1 (Construction Regulations) | 7 days before commencement on site |
| 2.2 | Assignment of Responsible Person to Supervise Construction Work | All relevant appointments, as per OHS Act and Construction Regulations | 7 days before commencement on site |
| 2.3 | Competence of Responsible Persons | Department Requirement & OHS Act | Together with H&S plan |
| 2.4 | Compensation of Occupational Injuries and Diseases Act (COIDA) 130 of 1993 (Certificate) | COIDA Requirement | Together with H&S plan |
| 2.5 | Health and Safety Organogram | Department Requirement | Together with H&S plan |
| 2.6 | Initial Hazard Identification and Risk Assessment based on the Department's assessment | Construction Regulations | Together with H&S plan |
| 2.7 | Medical Certificate of Employees | Construction Regulations | Before commencement of construction. |

28. INJURY TO PERSONS

- 28.1. The Contractor shall be liable for and shall indemnify the department in respect of any liability, loss, claim or proceedings whatsoever, whether arising in Common Law or by Statute in respect of personal injuries to or death of any person whomsoever arising out of or in the course of or caused by the execution of the Works.

29. **DISAGREEMENTS**

29.1. Notice of disagreement. The Contractor has the right by written notice to the Engineer to require him to consider any disagreement which he raises with the Engineer provided the said written notice shall be given within 14 days after the cause of disagreement has arisen.

29.2. Ruling on disagreements. The Engineer shall give a ruling on the disagreement in writing to the Contractor no later than 14 days after his receipt of a written request from the Contractor requiring him to do so. The Engineer shall provide such a ruling with as little delay as possible. During the response time the Contractor shall not alter the status of the works under contention.

30. **FIXED PRICE CONTRACT**

30.1. The contract shall **not** be subject to contract price adjustment

31. **PRICING - COMPLETENESS OF BID**

31.1. Bidders are required to Bid for all services, products and commissioning as specified in this document and associated plans. This includes those optional items that will be pointed out as required at the bid briefing (e.g. VIP toilet(s), fencing and other). If he/she does not bid on all items, his/her bid will be rejected.

31.2. All bid/quoted prices for *line* items are to be in South African currency and must **exclude** VAT.

31.3. All items as described in the project specification are to be priced in full.

31.4. Transport/Delivery costs must be included in the pricing if the Pricing Schedule does not list them separately.

31.5. VAT must be filled in as the sub total followed by the complete price for the entire project.

31.6. The Bid price page must be signed by a person legally authorized to do so.

32. **QUANTITIES OF WORK**

33. The Contractor shall receive payment only for the works actually executed and approved by the Engineer.

34. **PROGRESS PAYMENTS**

34.1. Payment shall only be made for claims that are commensurate with the works actually executed and complete. **No advances will be paid for deposits to be paid by the contractor to specialist supply companies, unless such has been explicitly agreed upon with the Employer's Agent/ Engineer.**

34.2. Payment will only be made against the construction progress as pertaining to **built /installed** items. Movable items and materials on site are generally excluded from progress payments until they have been fully installed or fitted or built up.

34.3. If any item or part of an item in an invoice is disputed by the Engineer, the Engineer shall give notice of such with reasons.

34.4. The Engineer may elect to use a payment schedule that apportions a weighting for the various work phases, in those cases where the actual pricing schedule is not available or lacks balance.

34.5. Payments / Part payments will be made after the Engineer has approved the work and will be made in accordance with the Retention clause (39)

- 34.6. The penultimate payment occurs after *Final Approval Certificate*. The final payment will be made after the 12 months' liability period when the contractor has dealt with all defects, if any.

35 COMPLETION OF THE WORKS

- 35.1 Work completion will be established over three stages.

35.1.1 Practical completion

This is defined as the stage when the works are found to be substantially complete and can be used for the intended purposes. This assessment will be solely made by the Engineer. When the Contractor thinks he has completed the works, an inspection will be made by the Engineer who, if sufficient progress has been made, will issue a **Practical Completion Certificate**, and will draw up a list of outstanding work, commonly known as a "snag list", if any. *Patent defects* are defects that are visible or discoverable upon an ordinary and proper inspection.

35.1.2 Works completion

This stage will be reached after the Contractor has, to the sole assessment of the Engineer, fixed all defects listed on the snag list. To certify Works Completion, a **Certificate of Completion** will be issued. It is at after Works completion that the Contractor will be paid out 50% of his/her retention money.

35.1.3 Final Completion

Final Completion occurs 12 months after Works completion, after expiry of the liability period. To certify Final Completion, a **Final Approval Certificate** is issued.

36 RETENTION

- 36.1 A 10% retention will be withheld on payment for the duration of the construction.
- 36.2 In case a bank or insurance guarantee was issued, the retention will be 5%.
- 36.3 The Department will pay out half of this retention, or 5% of the bid value as part of the second last payment at **practical completion** of the works. The remainder, viz 5%, will be paid out at **final completion** after expiry of the defect liability period 12 months after practical completion), the bidder having eliminated all defects.
- 36.4 In some instances, the Engineer may decide to shorten this period order to allow all payments to be completed within the financial year. However, this is **not** a given and the Contractor will be notified during the course of the construction if such would be the case.

37 DEFECT LIABILITY PERIOD

- 37.1 The defect liability period is 12 calendar months calculated from the date of Works Completion.
- 37.2 The contractor shall unconditionally guarantee all materials, workmanship related to the works for that period. The guarantee shall cover any defects due to inferior materials and/or workmanship of the Contractor, or any of his sub-contractors, fair wear and tear excepted. The Contractor shall repair, remedy or replace any such defects, part or complete works without delay and at his own cost.

38 CONTINGENCIES

- 38.1 An amount of 10% of the subtotal for all materials, equipment and services has been set aside for Contingencies. In the case of the Contractor having provided a security in the form of a bank or insurance guarantee, the retention will be 5%. This allowance will only be accessed for unforeseen additional expenditure not covered in the contract. **Payment of the Contingencies allocation is therefore not a given**, as the occurrence of limited, or even absence of any approved Contingencies will reduce the total amount paid out for this contract.

38.2 Approval from the Engineer for the use of the Contingencies allocation is required before any purchases can be made or work is started from this allocation.

39 PERIOD OF COMPLETION & RATE OF PROGRESS

39.1 The project has to reach practical completion within **[number of months, minimum 6] months** calculated from the date of site handover.

39.2 The final payment will be made after the defect liability period of 12 months.

39.3 If the Works are delayed by any cause beyond the Contractor's control, the Contractor shall have the right within twenty-one days of any such cause of delay arising, to apply in writing to the Department to extend the date of completion, stating the cause of delay and period of extension applied for.

39.4 The Department upon receipt of such written application may by order in writing extend such date of completion by a period to be determined, or may refuse to extend such date of completion, or may postpone giving a decision upon such application until completion of the Contract period set out in sub-clause (a) of this clause.

39.5 The date of completion will be extended only to the extent approved by the Department.

39.6 Should the Contractor fail to apply in writing for an extension within the time set out above, or should the Department refuse to grant any extension in writing, then the Contract period provided shall not be exceeded.

39.7 When the Works are completed the Department will give a completion certificate and the date of such certificate shall be the date of commencement of the guarantee period.

40 PENALTY CLAUSE / FINES FOR LATE OR NON-COMPLETION

40.1 If the contractor does not complete the work within the time stipulated and no extenuating circumstances can be given for the delay, the Department may impose a fine as detailed below. The total will be subtracted from the retention allowance.

40.2 If the contractor fails to complete the works and the Department is forced to employ another contractor to complete the works, the defaulting contractor will be held liable for the costs as far they exceed the original total Bid value.

40.3 The department will deduct a penalty for late completion of up to **0.05% of the contract value per working day delay**. This will be deducted from the retention.

C | STANDARD TECHNICAL SPECIFICATIONS

1. PRELIMINARIES & GENERAL

The contractor is to note that all insurances (UIF, workmen compensation, works, public liability etc.); site and equipment safety; site establishment and security; services (water and electricity); testing of materials and any specialist services are for the contractor's responsibility and attention throughout the contract duration until handover of the project. This item also includes Occupational Health & Safety Act requirements. The Department reserves the right to stop progress of the works in case of non-compliance until these conditions are complied with.

2. APPLICABLE STANDARDS: SPECIFICATIONS & MATERIALS

2.1. For the purpose of this Contract the relevant SANS specifications shall apply- specifically SABS 1200: *Standardized Specification for Civil Engineering Construction* specifications shall apply. The following sections shall in particular apply here:

- 2.1.1. **SABS 1200 AA - 1986** (General - Small Works),
 - 2.1.1.1. Materials: SABS 1200 AA (3);
 - 2.1.1.2. Testing: SABS 1200 AA (7);
- 2.1.2. **SABS 1200 DA -1988** (Earthworks - Small Works)
- 2.1.3. **SABS 1200GA – 1982** (Concrete - Small Works).
 - 2.1.3.1. Materials SABS 1200 GA (3)
 - 2.1.3.2. Mixing, pouring and curing of concrete: SABS 1200 GA (5.4)
 - 2.1.3.3. Testing: SABS 1200 GA (7)
- 2.1.4. **SANS 50197-1**: Cement: Common cement 42,5N or R to SANS 50197-1
- 2.1.5. **SANS 2001-BS1**: Site Clearance (2008)
- 2.1.6. **SANS 2001-BE1**: Earthworks (general) (2008)
- 2.1.7. **SANS 2001-CC2**: Concrete works (2007)
- 2.1.8. **SANS 2001-CM2**: Strip footings, pad footings & concrete-slab-on-the-ground (2011)
- 2.1.9. **SANS 2001-DP5**: Storm water drains (2010)
- 2.1.10. **CKS 451 – 1976**: Specification for Anti-Intruder Fences (June 1976)
- 2.1.11. **CKS 82**: Spec for Steel posts, stays, standards & droppers for strained wire fences (1975)
- 2.1.12. **SANS 23-4**: Steel wire welded mesh fencing (2003)
- 2.1.13. **SANS 675**: Zinc-coated fencing wire (2009)
- 2.1.14. **SABS 135**: ISO Metric Black Bolts, Screws & Nuts
- 2.1.15. **SANS 684**: Structural Steel Paint
- 2.1.16. **SANS 10322**: Structural Aluminium Paint

3. APPLICABLE STANDARDS: EARTHWORKS AND SITE PREPARATION

3.1. Normal regulations regarding safety, municipal by-laws, contamination of water sources, erosion, siltation etc. will still apply.

- 3.1.4. **SABS 1200 AA - 1986** (General - Small Works),
 - 3.1.4.1. Site preparations & establishment: SABS 1200 AA (4).
 - 3.1.4.2. Setting out of works: SABS 1200 AA (5.1.1)

4. APPLICABLE STANDARDS: STANDARD (ABRIDGED) PREAMBLE FOR ALL TRADES

4.1. All materials to be SANS approved and installed to applicable standards specified by SANS, NBR, or the manufacturer.

5. MATERIALS AND CONSTRUCTION

- 5.1. All materials must be newly purchased and conform to SABS specifications for the products. This includes all items such as bricks, blocks, brick reinforcement, damp proofing, lintels, glazing, plumbing and drainage, curtains, etc... All construction works must conform to the applicable standard specifications and installation requirements as per NBR requirements and manufacturers recommendations. All concrete works to conform to CNCI standards and recommendations.

| |
|--|
| |
|--|

LIST OF APPENDICES

| APPENDIX | DESCRIPTION | PAGE |
|----------|--|-------|
| 1 | APPENDIX 1 PRICING DATA | 56-60 |
| | SUMMARY OF SECTIONS | 61 |
| | SUMMARY OF SCHEDULES | 62 |
| | PRICING SCHEDULE/BOQ | 63 |
| 2 | APPENDIX 2 CONTRACT DATA | 64 |
| 3 | APPENDIX 3 CONTRACTOR'S EXPERIENCE & EXPERTISE | 65 |
| 4 | APPENDIX 4 SUB CONTRACTORS | 66 |
| 5 | APPENDIX 5 HEALTH & SAFETY DECLARATION | 67 |
| 6 | APPENDIX 6 DRAWINGS | 68 |

**BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-
JOZINI LM, UMKHANYAKUDE DM**

| SUMMARY OF SCHEDULES | | |
|-----------------------------|---|------------------|
| SCHEDULE | DESCRIPTION | AMOUNT |
| 1 | SECTION 1: PRELIMINARY & GENERAL | R |
| 2 | SECTION 2: DAYWORK (PROVISIONAL) | RATE ONLY |
| 3 | SECTION 3: SITE CLEARANCE, PRIMARY LAND PREPARATION AND ACCESS ROADS | |
| 4 | Contingencies 10% | R |
| SUBTOTAL | | R |
| VAT 15% | | R |
| TOTAL | | R |

APPENDIX 1
PRICING DATA (3)
**BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-
JOZINI LM, UMKHANYAKUDE DM**
SECTION A: PRELIMINARY AND GENERAL

| ITEM NO | PAY | DESCRIPTION | UNIT | QTY | RATE | AMOUNT |
|---|-----------------------------|--|------|-----|------|--------|
| 1.1 | SABS 1200A A | <u>Fixed Charge</u> | | | | |
| 1.1.1 | 8.3.1 | Contractual requirements and general (insurance, sureties etc.) | Sum | 1 | | |
| 1.1.2 | 8.3.2.2 | Facilities required by Contractor | Sum | 1 | | |
| 1.1.2.1 | | a) Storage sheds (6m x3m) | | | | |
| 1.1.2.2 | | d) Living accommodation | | | | |
| 1.1.2.3 | | e) Ablution and latrine facilities at construction site | | | | |
| 1.1.2.4 | | g) Water supplies, electric power and communications | | | | |
| 1.1.3 | 8.3.3 | Complying with Health and Safety Act | Sum | 1 | | |
| 1.1.3.1 | | (i) Preparation of Health and Safety | | | | |
| 1.1.3.2 | | (ii) Compilation of a Risk Assessment prior to construction | | | | |
| 1.1.3.3 | | (iii) Health and Safety Induction Training of employees | | | | |
| 1.1.3.4 | | (v) Implementation of the Health and Safety Plan over the entire construction period | | | | |
| 1.1.3.5 | | (vi) Provision of safety gear as per OHS ACT | | | | |
| 1.1.4 | 8.3.4 | Removal of site establishment on completion | Sum | 1 | | |
| 1.2 | | <u>Time Related Charges</u> | | | | |
| 1.2.1 | 8.4.1 | Contractual requirement | Sum | 1 | | |
| TOTAL SECTION 1 CARRIED TO SUMMARY | | | | | | |

SECTION A: PRELIMINARY AND GENERAL CTD

| ITEM NO | PAY | DESCRIPTION | UNIT | QTY | RATE | AMOUNT |
|---|-------|--|-----------|-----|--------------|--------------|
| 1.2.2 | 8.4.2 | Facilities for Contractor | | | | |
| 1.2.2.1 | | a) Offices and storage sheds | Month | 3 | | |
| 1.2.2.2 | | d) Living accommodation | Month | 3 | | |
| 1.2.2.3 | | e) Ablution and latrine facilities at construction site | Month | 3 | | |
| 1.2.2.4 | | g) Water supplies, electric power and communication | Month | 3 | | |
| 1.2.3 | 8.4.3 | Complying with Health and Safety Act | Month | 3 | | |
| 1,3 | | SUMS STATED PROVISIONALLY BY ENGINEER | | | | |
| 1.3.1 | | Appointment of environmental specialist to assist with the identification and demarcation of protected trees | Prov. Sum | 1 | R 100 000,00 | R 100 000,00 |
| 1,4 | | Deal with existing pipes and services in case of obstruction | Prov. Sum | 1 | R 50 000,00 | R 50 000,00 |
| TOTAL SECTION 1 CARRIED TO SUMMARY | | | | | | |

APPENDIX 1

PRICING DATA (5)

BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-, JOZINI LM, UMKHANYAKUDE DM

| |
|--|
| |
|--|

SECTION B: DAYWORKS

| ITEM NO | PAY | DESCRIPTION | UNIT | QTY | RATE | AMOUNT (R) |
|---|-----|--|------|-----|------|------------------|
| 2.1 | | <u>Section 2.1: Labour</u> | | | | |
| 2.1.1 | | Skilled | day | 1 | | Rate only |
| 2.1.2 | | Semi-skilled | day | 1 | | Rate only |
| 2.1.3 | | Unskilled | day | 1 | | Rate only |
| 2.2 | | <u>Section 2.2: Plant</u> | | | | |
| 2.2.1 | | 4 x 4 TLB or similar | | | | |
| | | Type..... | | | | |
| | | KW..... (to be filled in by tenderer) | hour | 1 | | Rate only |
| 2.2.2 | | Excavator: | | | | |
| | | Type..... | | | | |
| | | KW..... (to be filled in by tenderer) | hour | 1 | | Rate only |
| 2.2.3 | | Tipper truck 6m ³ : | | | | |
| | | Type..... (to be filled in by tenderer) | hour | 1 | | Rate only |
| 2.2.4 | | Bull dozer 160kW - 170kW | | | | |
| | | Type:..... (to be filled in by the tenderer) | hour | 1 | | Rate only |
| TOTAL SECTION 2 CARRIED TO SUMMARY | | | | | | Rate only |

APPENDIX 1

PRICING DATA (6)

BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME-, JOZINI LM, UMKHANYAKUDE DM

SECTION B: SITE CLEARANCE, PRIMARY LAND PREPARATION AND ACCESS ROADS

| ITEM NO | PAY | DESCRIPTION | UNIT | QTY | RATE | AMOUNT |
|---|------------------------|--|------------------------|-----|------|-----------|
| 3.1 | SAB S 1200 C | <u>Clearing and grubbing</u> | | | | |
| 3.1.1 | 8.2.1 | Clear and grub vegetation and bush on the specified area | ha | 100 | | |
| 3.1.2 | 8.2.3 | Remove and grub all trees and tree stumps regardless of girth | ha | 5 | | |
| 3.1.5 | 8.2.9 | Transport materials and debris to site identified by the Engineer and dump | m ³ .k m | 500 | | |
| 3.2 | PPS | <u>Land Preparation</u> | | | | |
| 3.2.1 | PPS 1/ 2 | Rip/ plough lands to 300mm to remove any roots & boulders | ha | 100 | | |
| 3.3 | SAB S 1200 DM | <u>Access Roads (Rehabilitation of Entrance and Internal Roads)</u> | | | | |
| 3.3.1 | | Rehabilitation of entrance and infield roads conforming to " Road Standard and Specifications" category 3B road. Road as per layout provided by the Engineer | Sum | 1 | | Rate Only |
| TOTAL SECTION 3 CARRIED TO SUMMARY | | | | | | |

APPENDIX 2
CONTRACT DATA (1)
CONTRACT DATA FOR BUSH CLEARING AND LAND PREPARATION AT NDUMO A IRRIGATION SCHEME, JOZINI LM, UMKHANYAKUDE DM

| |
|--|
| PART 1: DATA PROVIDED BY THE EMPLOYER |
| A CONDITIONS OF CONTRACT |
| The General Conditions of Contract for Construction Works, Third Edition, 2015, published by the South African Institution of Civil Engineer's Agents, Private Bag X200, Halfway House, 1685, is applicable to this Contract |
| B CONTRACT SPECIFIC DATA |
| The following contract specific data, referring to the General Conditions of Contract for Construction Works, Second Edition, 2010, are applicable to this Contract: |

| COMPULSORY DATA | | |
|------------------------|---|--|
| Clause 1.1.1.13: | The Defects Liability Period is ... | 12 MONTHS |
| Clause 1.1.1.14 | The time for achieving Practical Completion is | A time measured in weeks from the Commencement Date. |
| Clause 1.1.1.15: | The name of the Employer is | KZN Department of Agriculture and Rural Development |
| Clause 1.1.1.26 | The Pricing Strategy is | Fixed Price Contract |
| Clause 1.2.1.2 | The address of the Employer is | 01 Cedara Road, Pietermaritzburg, 3200. Private Bag X9059, Pietermaritzburg, 3200 |
| Clause 1.1.1.16 | The name of the Employer's Agent is | Mzukisi Ngejane |
| Clause 1.2.1.2 | The address of the Employer's Agent is | KZNDARD Engineering Services 1 Cedara Road Pietermaritzburg, 3200 Private Bag X9059, Pietermaritzburg, 3200 |
| Clause 5.3.1 | The documentation required before commencement with Works execution are | <ul style="list-style-type: none"> ● Health and Safety Plan (Clause 4.3) ● Initial programme (Clause 5.6) ● Security (Clause 6.2) ● Insurance (Clause 8.6) |
| Clause 5.3.2: | The time to submit the documentation required before commencement with Works execution is | 14 days |

APPENDIX 2

CONTRACT DATA (2)

| COMPULSORY DATA (Continued) | | |
|------------------------------------|--|--|
| | The non-working days are | Sundays |
| Clause 5.8.1: | The special non-working days are: | 1) Public holidays 2) <i>The year end break commencing on 16 December 2022 and ending on 9 January 2023.</i> |
| Clause 5.13.1 | The penalty for failing to complete the Works within the Completion period is | Up to 0.05% per day of the contract amount minus the Contingencies |
| Clause 5.16.3 | The latent defect period is | <i>Usually 10 years for civil Employer's Agenting works, 5 years for building works but shorter for certain electrical and mechanical Employer's Agenting works.</i> 5 years for building works |
| Clause 6.5.1.2.3 | The percentage allowance to cover overhead charges is | 10% |
| Clause 6.10.1.5 | The percentage advance on materials not yet built into the Permanent Works is | 0% (Default) 50% (Only applies if special permission is granted) |
| Clause 6.10.3 | The limit of retention money is | <ul style="list-style-type: none"> • 10% of the contract amount minus contingencies. • 5% if a guarantee of an insurance company or bank is provided that is equal to or greater than 10% of the contract price. |
| Clause 8.6.1.1.2 | The value of Plant and materials supplied by the Employer to be included in the insurance sum is | <i>Monetary value</i> |
| Clause 8.6.1.1.3 | The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is | R0 |
| Clause 8.6.1.3 | The limit of indemnity for liability insurance is | R 2.0m |

| OPTIONAL DATA | | |
|--|--|--------------------|
| <i>The data below is by default NOT applicable and will only apply if the column below indicates YES</i> | | |
| Clause No. | Description | Applicable? |
| 5.4.2 | The access and possession of Site shall not be exclusive to the Contractor but as set out in the Site Information | YES |
| 6.8.2 | <p>The value of the certificates issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values: <i>If the value of x is not 0.1 then:</i></p> <p>The value of "x" is ...</p> <p>The values of the coefficients are:</p> <p>a = ... <i>Labour</i></p> <p>b = ... <i>Contractor's equipment</i></p> <p>c = ... <i>Material</i></p> <p>d = ... <i>Fuel</i></p> <p><i>Please note that the total of all the coefficients must equal 1.0</i></p> | No |
| | <p>The province wherein the larger part of the Site is located is KZN</p> <p><i>Select the province for which the Labour Index would be applicable from Statistical News Release, P0141, Table A</i></p> | No |
| | <p>The applicable industry for the Producer Price Index for materials is</p> <p><i>From Statistical News Release ("Construction Materials Price Indices"), P0151.1, Table 3</i></p> | No |
| | <p>The area for the Producer Price Index for fuel is KZN</p> | No |
| | <p>The base month is <i>[month and year prior to the closing of the tender.]</i></p> | No |
| 6.8.3 | Price adjustments for variations in the costs of special materials are allowed. | No |

APPENDIX 3

CONTRACTOR'S EXPERIENCE & EXPERTISE

Please indicate your experience and expertise by completing the table.

| No | Name of project + Period | Project description & Value | Name and contact number of referee |
|-----------|-------------------------------------|--|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

APPENDIX 4

SUBCONTRACTORS

Please list which parts of the works will be sub-contracted.

| NO. | ASSOCIATED WORKS | NAME & CONTACT DETAILS OF SPECIALIST SUPPLIER |
|-----|------------------|---|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |

Contractor's Health and Safety Declaration

In terms of Clause 5(1)(h) of the OHS Act 1993 Construction Regulations 2014 (referred to as "the Regulations" hereafter), a Contractor may only be appointed to perform construction work if the Department is satisfied that the Contractor has the necessary competencies and resources to carry out the work safely in accordance with the Occupational Health and Safety Act No 85 of 1993 and the OHS Act 1993 Construction Regulations 2014.

To that effect a person duly authorised by the bidder must complete and sign the declaration hereafter in detail.

Declaration by Bidder

1. I the undersigned hereby declare and confirm that I am fully conversant with the Occupational Health and Safety Act No 85 of 1993 (as amended by the Occupational Health and Safety Amendment Act No 181 of 1993), and the OHS Act 1993 Construction Regulations 2014.
2. I hereby declare that my company has the competence and the necessary resources to safely carry out the construction work under this contract in compliance with the Construction Regulations and the Department's Health and Safety Specifications.
3. I hereby confirm that adequate provision has been made in my tendered rates and prices in the Bill of Quantities to cover the cost of all resources, actions, training and all health and safety measures envisaged in the OHS Act 1993 Construction Regulations 2014, including the cost of the specific items listed in the tables hereafter.

(Tables to be completed by bidder)

TABLE 1: COST OF SAFETY PERSONNEL

| PERSONNEL | NOMINATED PERSON/S | COSTS AS ALLOWED IN BID |
|---|--------------------|-------------------------|
| Construction Supervisor | | R |
| Construction Safety Officer | | R |
| Health & Safety Representatives | | R |
| Health and Safety Committee | | R |
| OTHER PERSONNEL | | R |
| << TOTAL (BRING FORWARD TO PRELIMINARIES ITEM A.4.2 (TIME RELATED OHS COSTS)<<< | | R |

TABLE 2: COST OF SAFETY EQUIPMENT

| EQUIPMENT | STATE YES or NO | COST ALLOWED FOR IN BID |
|---|------------------------|--------------------------------|
| Hard hats | | R |
| Safety boots | | R |
| Add items as per risk assessment: | | |
| | | R |
| | | R |
| | | R |
| | | R |
| << TOTAL (BRING FORWARD TO PRELIMINARIES ITEM A.4.1 (FIXED OHS COSTS) <<< | | R |

4. I hereby undertake, if my bid is accepted, to provide, before commencement of the works under the contract, a suitable and sufficiently documented Health and Safety Plan in accordance with Regulation 7(1)(a) of the Construction Regulations, which plan shall be subject to approval by the Department.

5. I confirm that copies of my company's approved Health and Safety Plan, the Department's Safety Specifications as well as the OHS Act 1993 Construction Regulations 2014 will be provided on site and will at all times be available for inspection by the Contractor's personnel, the Department's personnel, the Engineer, visitors, and officials and inspectors of the Department of Labour.

6. I hereby confirm that, I will be liable for any penalties that may be applied by the Department in terms of the said Regulations (Regulation 33) for failure on the Contractor's part to comply with the provisions of the Act and the Regulations.

7. I agree that my failure to complete and execute this declaration to the satisfaction of the Department will mean that I am unable to comply with the requirements of the OHS Act 1993 Construction Regulations 2014, and accept that my bid will be prejudiced and may be rejected at the discretion of the Department.

SIGNATURE OF BIDDER **DATE**

(of person authorised to sign on behalf of the Bidder)

APPENDIX 5

DRAWINGS

| LIST OF DRAWINGS | | | |
|-------------------------|------------------|--------------|-------------|
| NUMBER | REFERENCE | TITLE | PAGE |
| DR01 | | | 103 |
| DR02 | | | 104 |
| DR03 | | | 105 |
| DR04 | | | 106 |
| DR05 | | | 107 |
| DR06 | | | 108 |
| DR07 | | | 109 |
| DR08 | | | 110 |
| DR09 | | | 111 |
| DR10 | | | 112 |
| DR11 | | | 113 |
| DR12 | | | 114 |
| DR13 | | | 115 |
| DR14 | | | 116 |
| DR15 | | | 117 |