

PART C1.2: CONTRACT DATA PROVIDED BY THE EMPLOYER
CONDITIONS OF CONTRACT

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The Conditions of Contract comprise the “General Conditions” – which form part of the "Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer" First Edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and the following “Particular Conditions”, which include amendments and additions to the General Conditions. The reference document is the hardcopy published by FIDIC in A4 format.

PARTICULAR CONDITIONS

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PARTICULAR CONDITIONS

The Particular Conditions are:

CLAUSE 1 - GENERAL PROVISIONS

Sub-Clause 1.1.1 – The Contract

1.1.1.1 “**Contract**” – in the second line after “the Letter of Tender,”, add “Contract Data,”

Add the following new Sub-Clauses:

“1.1.1.2A “**Contract Data**” means the Particular Conditions that, together with the General Conditions collectively describe the risks, liabilities and obligations of the Parties and the procedures for the administration of the Contract.

1.1.1.5A “**Employer’s Requirements**” means employer’s requirements included in the Contract as indicated in the Preamble to Specifications and in the Project Structure Diagram and references to employer’s requirements located in the Specifications for those parts of the Works designed by the Contractor and any additions and modifications to such references in accordance with the Contract. Such references describe the purpose(s) for which the parts of the Works are intended and specify the scope, and/or design and/or other performance, technical and evaluation criteria, for the applicable parts of the Works.

1.1.1.11 “**Supplementary Agreement**” means a signed agreement, titled “Supplementary Agreement”, made between the Parties.

Sub-Clause 1.1.3 – Dates, Tests, Periods and Completion

1.1.3.7 “**Defects Notification Period**”

Delete the text of this Sub-Clause and substitute:

“**Defects Notification Period**” means the period for notifying defects in the Works or, subject to the provisions of this Sub-Clause, in a Section (as the case may be) under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Appendix to Tender (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]).

For the whole of the Works such period shall be calculated from the date on which the Works were completed as stated in the Taking-Over Certificate issued by the Engineer for the whole of the Works implemented under this Contract in accordance with Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

In the case of any Section or part of the Works in respect of which a Taking-Over Certificate is issued under Sub-Clause 10.1 [*Taking Over of the Works or Sections*] or 10.2 [*Taking Over of Parts of the Works*], as the case may be, the “Defects Notification Period” shall mean the period commencing on the date on which such Taking-Over Certificate is issued and ending on the Expiry Date.”

Add the following new Sub-Clause:

- “1.1.3.8A **“Supplementary Performance Certificate”** means the certificate issued under Sub-Clause 11.9 [*Performance Certificate*] relating specifically to the Contractor’s performance of his obligations under the Contract with regard to Specification Section 47, Landscaping and Rehabilitation.”
- 1.1.6.6A **“Supplementary Performance Security”** means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*] relating specifically to the Contractor’s performance of his obligations under the Contract with regard to Specification Section 47, Landscaping and Rehabilitation.”

Add the following new Clauses:

- “1.1.3.10 **“Expiry Date”** means the last day of the Defects Notification Period for the whole of the Works.”
- 1.1.3.11 **“Ready for Commissioning” (RFC)** means the status of the Works at the point in time when the obligations in respect of the pre-commissioning tests required pursuant to Sub-Clauses 7.4 [*Testing*] and 9.1(a) have been complied with and that the commissioning tests required pursuant to Sub-Clause 9.1(b) can safely be commenced.
- 1.1.3.12 **“Ready for Trial Operation” (RFTO)** means the status of the Works at the point in time when the obligations in respect of the commissioning tests required pursuant to Sub-Clauses 7.4 [*Testing*] and 9.1(b) have been complied with and that the trial operations required pursuant to Sub-Clause 9.1(c) can safely be commenced, and provided that:
- (a) as a condition precedent, the Contractor has complied with his obligations to achieve the RFC status of the Works; and
 - (b) the period of time between RFC and RFTO shall not be less than the days specified with reference to the approved baseline schedule.
- 1.1.3.13 **“Ready for Operation” (RFO)** means the status of the Works at the point in time when a Taking-Over Certificate for the whole of the Works has been issued pursuant to Clause 10 [*Employer’s Taking Over*], and provided that, as a condition precedent, the Contractor has complied with his obligations to achieve the RFTO status of the Works.”
- 1.1.3.14 **“Contract Price Adjustment” (CPA)** means the Adjustment for Changes in Costs pursuant to Sub-Clause 13.8 as sole compensation for any increases or decreases in any charges elemental to the rates and prices in the Contract as calculated in the adjusted Sub-Clause 13.8.

Sub-Clause 1.2 – Interpretation

After sub-paragraph (d), add:

“(e) Where, in these Conditions, provisions include the expression “Cost plus reasonable profit” this profit is deemed to be one-twentieth (5%) of this Cost.”

Sub-Clause 1.5 – Priority of Documents

Delete the documents listed (a) to (h) and substitute:

- “(a) the Contract Agreement,
- (b) the Letter of Acceptance, and/or the Memorandum of Understanding (if any),
- (c) the Letter of Tender and Appendix to Tender,
- (d) the Particular Conditions,
- (e) the General Conditions,
- (f) the Specification,
- (g) the Drawings,
- (h) the priced Bill of Quantities,
- (i) Site Data,
- (j) Schedules other than the Bill of Quantities, and
- (k) any other documents forming part of the Contract.

All Addenda and the Memorandum of Understanding, if any, which modify the terms of the Tender Documents take precedence only over the document to which they relate.”

Sub-Clause 1.12 – Confidential Details

After the first paragraph, add a new paragraph:

“The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the prior consent of the Employer.”

Sub-Clause 1.14 – Joint and Several Liability

At the end of sub-paragraph (c), add:

“In the event that such consent is obtained from the Employer, two (2) certified copies of the new signed joint venture agreement, or signed amended joint venture agreement, as the case may be, shall be submitted to the Employer with a copy to the Engineer within 28 (twenty-eight) days of signature by the separate parties to the amended joint venture agreement.”

Add the following new Sub-Clause:

“Sub-Clause 1.15 – Corrupt Practices

- (a) The Contractor (which for the purpose of this Sub-Clause 1.15 [*Corrupt Practices*] shall include his directors, employees, agents, shareholders and/or partners) undertakes that the performance of his obligations shall in no way constitute an infringement or other violation of the laws of the Republic of South Africa, and in particular will under no circumstances engage in any activities which may constitute corruption or corrupt activities within the ambit of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004, such activities to include:
- (i) accepting or agreeing, or offering to accept or give or offer any gratification to any person in order to influence such other person to act in a manner that amounts to the illegal dishonest exercise or performance of any power, duty, statutory, contractual or other legal obligation; or
 - (ii) procuring that any person, directly or indirectly, accepts or agrees or offers to accept any gratification from another person or gives or agrees or offers to give to any other person any gratification in order to improperly influence the conclusion or performance of his obligations in terms of this Contract.
- (b) In addition to any right which the Employer may have to cancel, in the event that the Contractor is convicted on a charge relating to, or concerning corruption, bribery or fraud during the 10-year period preceding or being convicted on a charge relating to, or concerning corruption, bribery or fraud, or in the event that the Contractor gives or offers any person any bribe, gratuity, commission or other thing of value as contemplated in Sub-Clause 1.15(a) or 1.15(b):
- (i) The Contractor shall forfeit any profit to be derived from this Contract;
 - (ii) Such profit will be deemed for the purpose hereof to be 5% of the Accepted Contract Amount;
 - (iii) The Contractor will make payment thereof on demand; or
 - (iv) The Employer shall be entitled to deduct such amount from any amount which is due or may become due and payable to the Contractor whether arising from this Contract or any other contract between the Employer and the Contractor.”

CLAUSE 2 – THE EMPLOYER

Sub-Clause 2.5 – Employer’s Claims

At the end of the first paragraph delete “or for other services requested by the Contractor” and substitute:

*“under Sub-Clause 4.25 [*Socio Economic Objectives*] and under Sub-Clause 8.7 [*Delay Damages*], or for any Plant, Materials or services as may be supplied to the Contractor as the case may be.”*

CLAUSE 3 – THE ENGINEER

Sub-Clause 3.1 – Engineer's Duties and Authority

At the end of sub-paragraph (b), delete “and” and at the end of sub-paragraph (c) delete the full stop and substitute a semicolon.

At the end of Sub-Clause 3.1, add:

- “(d) The Engineer shall obtain the approval of the Employer before carrying out the following duties in accordance with the Contract:
- (i) Giving notice of the Commencement Date in terms of Sub-Clause 8.1 [*Commencement of Works*];
 - (ii) Issuing an instruction in terms of Sub-Clause 8.8 [*Suspension of Work*] to suspend the progress of part or all of the Works; or
 - (iii) Instructing or approving a Variation in terms of Sub-Clause 13.1 [*Right to Vary*], Sub-Clause 13.2 [*Value Engineering*] or Sub-Clause 13.3 [*Variation Procedure*], which may increase or reduce the Contract Price.

Provided that such approval by the Employer shall not be required for instructions or notices which, in the sole opinion of the Engineer, are required to meet an emergency or are otherwise required to ensure the safety or security of the Works or of any person or property; and

- (e) Where the Engineer is not a single named individual, the Engineer shall within 7 days of the date of the Letter of Acceptance, and in any event before the Commencement Date, notify the Contractor and the Employer in writing of the name of the individual whom the Employer has agreed will act as the Engineer. The Engineer shall notify the Contractor of any replacement of the named individual and/or any changes to such delegation. Such replacement or change shall not take effect until such notification has been received by the Contractor and the Employer.”

Sub-Clause 3.2 – Delegation by the Engineer

In the last paragraph, delete the text of sub-paragraph (b) and substitute:

“if the Contractor questions any certificate, determination, instruction, opinion or valuation of an assistant, the Contractor shall refer the matter to the Engineer, who shall, promptly confirm, reverse or vary the certificate, determination, instruction, opinion or valuation.”

CLAUSE 4 – THE CONTRACTOR

Sub-Clause 4.1 – Contractor's General Obligations

Re-number the Sub-Clause as 4.1A.

After the third paragraph, add a new paragraph:

“The Contractor shall liaise and co-operate with the Engineer and his assistants (if any) and provide them with such access, information and facilities as they may reasonably require in order to enable them to perform their duties and carry out their obligations under the Contract.”

In the last line of sub-paragraph (d) between “documents and manuals” and “have been submitted” insert:

“as amended by the Contractor if found to be necessary during Tests on Completion”

Add the following new Sub-Clause:

“Sub-Clause 4.1B – Contractor’s Design Obligations

Where the Contractor undertakes, or is required, to design part or parts of the Works the following shall apply:

- (a) The Contractor shall carry out, and be responsible for, the design of that part (or parts) of the Works, as may be appropriate. Design shall be prepared by qualified designers who are engineers or other professionals. The Contractor shall submit to the Engineer for consent the name and particulars of each proposed designer and design Subcontractor. In respect of the Contractor’s design, the Contractor shall carry professional indemnity insurance, in accordance with Sub-Clause 18.7.

The Contractor undertakes that he, his designers and design Subcontractors have the experience and capability necessary to carry out the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times, until the Expiry Date of the Defects Notification Period.

- (b) On commencement of the Works pursuant to Sub-Clause 8.1 [*Commencement of Works*], the Contractor shall scrutinise the Employer’s Requirements and the Specification (including design criteria and calculations, if any) and the items of reference mentioned in Sub-Clause 4.7 [*Setting Out*]. Within the period stated in the Appendix to Tender, calculated from the Commencement Date, the Contractor shall give notice to the Engineer of any error, fault or other defect found in the Employer’s Requirements or the Specification or these items of reference.
- (c) After receiving this notice, the Engineer shall determine whether Clause 13 [*Variations and Adjustments*] shall be applied, and shall give notice to the Contractor accordingly. If and to the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error, fault or other defect when examining the Site, the Employer’s Requirements and the Specification before submitting the Tender, the Time for Completion shall not be extended and the Contract Price shall not be adjusted.”

Add the following new Sub-Clause:

“Sub-Clause 4.1C – Contractor’s Documents

The Employer’s Requirements and the Specification describe the Contractor’s Documents, (if any), which are to be submitted to the Engineer for review and/or for approval and they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (a) “review period” means the period required by the Engineer for review and (if so specified) for approval, and (b) “Contractor’s Documents” excludes any documents which are not specified as being required to be submitted for review and/or for approval.

Within 28 days of the issue of the Letter of Acceptance, the Contractor shall commence to submit the Contractor’s Documents for the Engineer’s Approval, as required. The Contractor shall continue to make submissions at a reasonable rate so that all the Contractor’s Documents are completed within a further 56 days or in accordance with a programme to be approved by the Engineer.

Unless otherwise stated in the Employer’s Requirements or the Specification, each review period shall not exceed 21 days, calculated from the date on which the Engineer receives a Contractor’s Document and the Contractor’s notice. This notice, by the Contractor, shall state that the Contractor’s Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use in the Contract. The notice shall also state that the Contractor’s Document complies with the Contract, or the extent to which it does not comply.

For each part of the Works, and except to the extent that the prior approval or consent of the Engineer shall have been obtained:

- (a) In the case of a Contractor’s Document which has (as specified) been submitted for the Engineer’s approval:
 - (i) The Engineer shall give notice to the Contractor that the Contractor’s Document is approved, with or without comments, or that it is deficient in any respect or that it fails (to the extent stated) to comply with the Contract;
 - (ii) Execution of such part of the Works shall not commence until the Engineer has approved the Contractor’s Document; and
 - (iii) The Engineer shall be deemed to have approved the Contractor’s Document upon the expiry of the review periods for all the Contractor’s Documents which are relevant to the design and execution of such part, unless the Engineer has previously notified otherwise in accordance with sub-paragraph (i);
- (b) Execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor’s Documents which are relevant to its design and execution;
- (c) Execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Contractor’s Documents; and
- (d) If the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give notice to the Engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

If the Engineer instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly. Any such approval or consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility."

Add the following new Sub-Clause:

"Sub-Clause 4.1D – Technical Standards and Regulations

The design, the Contractor's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements or Specification, applicable to the Works, or defined by the applicable Laws.

Where the Contractor requests that the Engineer design or re-design, the Contractor shall pay to the Employer the cost of such services as agreed to beforehand in a Supplementary Agreement in this regard. This payment shall be treated as a debt due and recovered by deduction in terms of paragraph (f) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*] for the purposes of payment in terms of Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] and Sub-Clause 14.13 [*Issue of Final Payment Certificate*]."

Add the following new Sub-Clause:

"Sub-Clause 4.1E – Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements or the Specification. If the Contract specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until this training has been completed."

Add the following new Sub-Clause:

"Sub-Clause 4.1F – As-Built Documents

The Contractor shall prepare and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two hard copies (and electronic copies as required by the Engineer) shall be supplied to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Engineer as-built drawings of the Works, showing all Works as executed, and submit them to the Engineer for review under Sub-Clause 4.1C [*Contractor's Documents*]. The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other relevant details."

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Engineer the specified numbers and types of copies of the relevant as-built drawings in accordance with the

Employer's Requirements or the Specification. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Engineer has received and approved these documents."

Add the following new Sub-Clause:

"Sub-Clause 4.1G – Contractor's Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval given by the Engineer under the Contract."

Add the following new Sub-Clause:

Sub-Clause 4.1H – Contractor's Liens, Security and Right of Retention

The Contractor hereby waives and abandons any Contractor's lien and any other security or right of retention which he may have in respect of the Works, Plant, Materials, and Contractor's Documents, and shall not be entitled to withhold delivery of the same to the Employer. The Contractor shall take reasonable steps to ensure that his Subcontractors similarly waive any liens, securities and rights which they may have and shall indemnify and hold the Employer harmless against and from any claims, demands, proceedings, loss, damage, costs and expenses made or incurred in respect thereof."

Sub-Clause 4.2 – Performance Security

Delete the second paragraph and substitute:

"The Contractor shall deliver the Performance Security to the Engineer within 28 days of the date of issue of the Letter of Acceptance. Subject to the documentation submitted being to the satisfaction of the Engineer, he shall submit this to the Employer with due regard to the requirements of Sub-Clause 14.2 [*Advance Payment*]. The Performance Security shall be issued by a financial institution registered and licensed to trade in South Africa and approved by the Employer. The Performance Security shall be in the form prescribed in the Tender Documents."

Delete the third paragraph and substitute:

"The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. The Performance Security shall indicate validity up to the date of issue of the Performance Certificate and shall not have an expiry date."

In the fourth paragraph, sub-paragraph (b), third line, between "Clause 20 [Claims, Disputes and Arbitration]" and "within 42 days", insert:

"or otherwise due to the Employer in terms of the Contract".

At the end of sub-paragraph (d), add:

"in which event the Employer may claim the full amount of the Performance Security".

Delete the last paragraph and substitute:

"The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate on condition that a substitute Supplementary Performance Security, in the form accepted by the Employer, has been issued by the Contractor in the amount and currencies stated in the Appendix to Tender. This Supplementary Performance Security will not be required if the Supplementary Performance Certificate has been issued by the Engineer relating to the Contractor's performance of his obligations under the Contract with regard to Specification Section 47, Landscaping and Rehabilitation, before or at the time the Performance Certificate was issued."

The Employer shall return the Supplementary Performance Security (if applicable) to the Contractor within 21 day after receiving a copy of the Supplementary Performance Certificate."

Sub-Clause 4.4 – Subcontractors

Delete in sub-paragraph (a):

"to suppliers of Materials, or"

Add a new sub-paragraph (e):

"(e) the Contractor shall be responsible for ensuring that each Subcontractor completes his work within the terms and conditions of the Contract and in particular in accordance with the requirements of the Contractor's latest Initial or Contract Programme, as may be appropriate, which has been prepared pursuant to Sub-Clause 8.3 [Programme]. The Contractor shall coordinate and make all necessary pro-active arrangements (including but not limited to physical, logistical, security, environmental, financial and institutional arrangements) to facilitate Subcontractors meeting their obligations."

Sub-Clause 4.8 – Safety Procedures

In sub-paragraph (a) between "applicable safety" and "regulations", insert

"laws and".

Sub-Clause 4.12 – Unforeseeable Physical Conditions

At the end of the first paragraph, after "climatic conditions", add

"and conditions arising as a consequence of climatic conditions".

After the second last paragraph, add a new paragraph:

"Notwithstanding anything contained in Sub-Clause 20.1 [Contractor's Claims], the cost of all work done or Contractor's Equipment and Temporary Works used by the Contractor earlier than 7 days prior to the Contractor giving such notice shall be deemed to have been covered in the rates and

prices as comprising the Accepted Contract Amount referred to in Sub-Clause 4.11 [*Sufficiency of the Accepted Contract Amount*].”

Sub-Clause 4.21 – Progress Reports

Add a new sub-paragraph (I and j):

- (i) Report on with preferential procurement targets to advance designated groups as indicated in the Specifications.
- (j) any other requirements by the Engineer.

Sub-Clause 4.24 – Fossils

*In the second line, between “items of geological” and “or archaeological”, insert
“, paleontological, mineralogical”.*

Add the following new Sub-Clause:

“Sub-Clause 4.25 – Socio-Economic Objectives

The Contractor shall comply with the Socio-Economic Objectives as set out in the Contract. Failure to do so will result in the Contractor becoming liable for penalties as set out in Specifications, Section 50 – Socio-economic Targets and Penalties”. The Contractor shall implement the project in a social manner as set out in the Specifications Section 3- Social Management and Socio-Economic Development Requirements.

CLAUSE 6 – STAFF AND LABOUR

Sub-Clause 6.5 – Working Hours

*In the second line, between “normal working hours” and “stated in the Appendix”, insert
“or on any special non-working days”.*

Sub-Clause 6.8 – Contractor’s Superintendence

After the first paragraph, add a new paragraph:

“In order to meet the requirements of this Sub-Clause the Contractor shall commit named key personnel to the Contractor’s Site management team, which personnel shall remain permanently assigned to the Contract at least until the Engineer agrees that such personnel have completed their assignments. The exception to this will be the situation where any of the key personnel ceases to be employed by the Contractor for any reason or decides to withdraw from the Site management team for reasons beyond the Contractor’s control. In such instances the Contractor will be required to submit to the Engineer proposals to replace the key person, which will only be considered by the Engineer if the Contractor can show that the proposed replacement has qualifications and experience equivalent to, or better than, the original key person.”

After the last paragraph, add a new paragraph:

“Unless otherwise approved by the Engineer, at least one member of the Contractor's superintending staff who is competent in speaking, reading, writing and understanding English and in the use of engineering and construction terminology expressed in English, shall be provided by the Contractor at each installation and at each location where the Works are in progress and for each working shift at such location or installation.”

Sub-Clause 6.9 – Contractor’s Personnel

At the end of the first paragraph, add:

“(e) The misconduct referred to above shall also be deemed to include discriminatory treatment, as described in Sub-Clause 6.11 [*Disorderly Conduct*], cultural or racial slurs, hate speech, incitement, etc. The Contractor is to actively pursue the enhancement of the dignity of each person within a climate of mutual respect among all, and especially among persons of different background, race, colour, creed, sex, gender, opinion or orientation and shall include the awareness and promotion of such matters in all training and induction.”

Sub-Clause 6.10 – Records of Contractor’s Personnel and Equipment

In the second line between “each class” and “of Contractor’s Personnel”, insert

“and the socio-economic category”.

At the end of the first sentence insert:

“including details of any Contractor’s Equipment which is due to be delivered to the Site or which the Contractor intends to remove from the Site subject to the prior approval of the Engineer”.

Add the following new Sub-Clauses:

“Sub-Clause 6.12 – Festivals and Religious Customs

The Contractor shall in all dealings with his staff and labour have due regard to all recognised festivals, days of rest and religious or other customs in the Country. No extension of time or financial compensation will be granted for the Contractor’s compliance with the demands of his staff or labour in this regard.

Sub-Clause 6.13 – Alcoholic Liquor or Drugs

Alcohol and Drugs shall not be permitted on the Site. The Contractor shall not import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor’s Personnel on Site.

Sub-Clause 6.14 – Arms and Ammunition

Arms and Ammunition shall not be permitted on the Site except by authorised security personnel. The Contractor shall not give, barter or otherwise dispose of to any person, any arms or ammunition of any kind, or allow the Contractor’s Personnel to do so on Site.”

CLAUSE 7 – PLANT, MATERIALS AND WORKMANSHIP**Sub-Clause 7.3 – Inspection**

In the third line of sub-paragraph (b) between “workmanship,” and “and to check”, insert “inspect all Drawings and records of any part of the Works,”.

Insert a new sub-paragraph after sub-paragraph (b):

“(c) The Contractor shall give the Engineer access to all drawings and records in his possession which relate to the construction of the Works.”

Sub-Clause 7.5 – Rejection

After the last paragraph, add a new paragraph:

“If, despite the Engineer’s rejection of Plant, Materials or Workmanship as above, the Employer decides at his discretion, having regard to the circumstances of the specific case only, to accept the item of work for any reason, such concession will not constitute any precedent nor detract in any other way from the Contract or Contractor’s obligations and responsibilities for otherwise full compliance. In this event, the concession will be made subject to a reduced payment for the Plant, Materials or Workmanship as determined by the Engineer in accordance with Sub-Clause 3.5 [*Determinations*]. Such concession will be without prejudice to the Employer’s rights and the Contractor’s obligations under the Contract and such determination will not be subject to Clause 20 [*Claims, Disputes and Arbitration*] and if the Contractor does not accept the Engineer’s determination, the item of work will be treated under Sub-Clause 7.6 [*Remedial Work*].”

Sub-Clause 7.6 – Remedial Work

After sub-paragraph (c), insert a new sub-paragraph:

“(d) carry out at the Contractor’s cost any additional work required to obviate the need to remove, replace, re-execute or re-design any work which due to the Contractor’s default is not in accordance with the Contract so that the same may be retained and, if the Engineer so instructs, valued in accordance with Sub-Clause 12.3 [*Evaluation*].”

Sub-Clause 7.8 – Royalties

At the end of the paragraph, add new paragraphs:

“The Contractor shall not be required to obtain mining licenses or leases within the Site.

All mining licences or leases within the Site which may be required for the execution of the Works, shall be obtained directly by the Employer for and on behalf of the Contractor.

No royalties, rent or other like payments shall be payable by the Contractor on construction material obtained within these mining leases.”

CLAUSE 8 – COMMENCEMENT, DELAYS AND SUSPENSION**Sub-Clause 8.1 – Commencement of Works**

In the first paragraph delete “ 7 days” and substitute with “ 14 days”.

Sub-Clause 8.3 – Programme

Delete the first paragraph and its sub-paragraphs and substitute:

“The Contractor shall submit a detailed time programme (the “Initial Programme” as stated in the Specification) to the Engineer within 14 days after the Commencement Date covering the works anticipated for execution of at least the first 6 months of the Contract period after the Commencement Date.

The Contractor shall also submit a comprehensive detailed time programme for the whole of the Works (the “Contract Programme” as stated in the Specification) to the Engineer within 84 days after the Commencement Date, which programme shall incorporate the Initial Programme and also include the Defects Notification Period.

The Contractor’s Tendered Contract Programme will be used by the Engineer to monitor and report on the progress of the Works until such time as the Initial Programme becomes effective. The Initial Programme will then be used by the Engineer to monitor and report on the progress of the Works until such time as the Contract Programme (as revised, from time to time) becomes effective.

Unless expressly so stated in the Letter of Acceptance, acceptance of the Tender will not signify acceptance of the Tendered Contract Programme, nor will it in any way relieve the Contractor of any of his obligations under the Contract.

The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor’s obligations. The Contract Programme and each revised programme shall be prepared and submitted to the Engineer utilising the time scheduling software as stated in the Appendix to Tender (the “Planning Software”) and shall include, and shall be supplemented by, all matters and detail as set out in the Specification.”

Delete the second paragraph and substitute:

“Unless the Engineer, within 14 days after receiving the Initial Programme, or within 28 days of receiving the Contract Programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with such programme, subject to his other obligations under the Contract. The Employer’s Personnel shall be entitled to rely upon the respective programme when planning their activities.”

Add to the end of the final paragraph:

“within 14 days of receipt of the Engineer’s notice, or such other time as may be proposed by the Contractor and approved by the Engineer”.

Sub-Clause 8.4 - Extension of Time for Completion

At the end of sub-paragraph (a), add:

“evaluated in accordance with Sub-Clause 12.3 [*Evaluation*] hereof,”.

At the end of sub-paragraph (c), add:

“including conditions arising as a consequence of exceptionally adverse climatic conditions, in excess of the number of working days’ delay per annum as stated in the Appendix to Tender, as must be allowed for by the Contractor in his programme on a cumulative basis over the whole Contract period,”.

After sub-paragraph (e), add new paragraphs:

“With reference to sub-paragraph (c) above the Contractor shall make allowance in his programmes (submitted pursuant to Sub-Clause 8.3 [*Programme*]) for delay to the progress of the whole of the Works or a Section due to climatic conditions or conditions arising as a consequence of climatic conditions for the number of working days as stated in the Appendix to Tender. Any delay in excess of the number of working days stated in the Appendix to Tender shall, for the purpose of this Sub-Clause, constitute exceptionally adverse climatic conditions. Provided that all such delays shall be recorded and agreed with the Engineer daily from the commencement to the conclusion of each occurrence and the allowance shall be cumulative over the entire Contract period up to the commencement of the Defects Notification Period for the whole of the Works.

Notwithstanding anything contained elsewhere in the Contract no extension of the Time for Completion of the Works or any Section or part thereof on account of exceptionally adverse climatic conditions or conditions arising as a consequence of climatic conditions will be considered as cause for additional payment to the Contractor.”

At the end of the Sub-Clause, add a new paragraph:

“Notwithstanding anything to the contrary in the Contract, the Contractor shall not be entitled to an extension of the Time for Completion where he has not used all reasonable endeavours to prevent, reduce or mitigate the delay, including providing such temporary measures as may be necessary to enable work to continue and the Works and Contractor's Equipment to be protected during exceptionally adverse climatic conditions.”

Sub-Clause 8.6 – Rate of Progress

At the end of the Sub-Clause, add new paragraphs:

“If at any time the Contractor fails to demonstrate, to the Engineer’s satisfaction, that the Works or any Section or part thereof will be completed within the relevant Time for Completion, the Engineer shall have the right, following the Contractor's failure to comply with a notice in terms of Sub-Clause 15.1 [*Notice to Correct*], and notwithstanding the provisions of Sub-Clauses 12.4 [*Omissions*] and/or 13.1(d) hereof, to omit any Section or part of the Works from the Contract and have that Section or part of the Works carried out by a third party or parties.

This right is in addition to any other rights that the Employer may have under or pursuant to this Contract. The Contractor shall remain liable (in terms of cost, quality, workmanship and full compliance with the Contract) for the completion of any Section or part of the Works so omitted and shall indemnify the Employer against any cost incurred by the Employer in having such Section or part of the Works carried out by a third party contractor. The Contractor's liability for cost pursuant to this Sub-Clause shall include the costs associated with acceleration where this is necessary in order to have the work completed within the relevant Time for Completion or, should it not be possible to achieve completion within this time, then within such time as, in the opinion of the Engineer, is reasonably practicable. The Contractor shall have no entitlement to claim any compensation or damages whatsoever arising from such omission."

Sub-Clause 8.7 – Delay Damages

In the first sentence delete

"subject to Sub-Clause 2.5 [*Employer's Claims*]".

Sub-Clause 8.10 – Payment for Plant and Materials in Event of Suspension

At the end of sub-paragraph (b) after "instructions", delete the full stop and insert "and".

Add the following new sub-paragraphs:

- "(c) the Contractor has submitted evidence acceptable to the Engineer that ownership is vested in the Contractor, and
- (d) the Contractor formally transfers ownership of the Plant and/or Materials to the Employer.

The Contractor shall not be entitled to payment for Plant and Materials if such Suspension was instructed as a consequence of any failure by the Contractor in the execution of the Contract."

After Sub-Clause 8.12 [Resumption of Work], add the following new Sub-Clause:

"Sub-Clause 8.13 – Provision for Accelerated Completion

If the Employer wishes to have the Works completed within a revised time being less than the Time for Completion or extended Time for Completion prescribed by Sub-Clause 8.2 [*Time for Completion*], then the Engineer shall require the Contractor to submit:

- (a) The Contractor's priced proposals for achieving the revised time, together with any proposed amendments to the programme; or
- (b) The Contractor's explanation as to why he is unable to achieve completion within the revised time.

The Contractor shall make such submission within 14 days of receipt of the Engineer's request or such other period as agreed to by the Engineer.

If the Employer accepts the Contractor's priced proposals, as amended or otherwise, a Supplementary Agreement in writing shall be prepared stating:

- (a) The revised Time for Completion;
- (b) The revisions to the programme, including any relevant critical path and any supporting documentation;
- (c) The amount or manner by which the Contract Price shall be adjusted; and
- (d) All other amendments to the Contract which have been agreed.

Any such agreement shall be concluded between the Contractor and the Employer before the Contractor is required to commence any acceleration to the Works.

Provided that any additional resources required by the Contractor to fulfil his obligations under the Contract and not included in such an agreement, will be deemed to be at the Contractor's risk and costs and will not constitute evidence or cause of any claim against the Employer, including acceleration of the Works or Sections or parts thereof."

CLAUSE 9 – TESTS ON COMPLETION

Sub-Clause 9.1 – Contractor's Obligations

At the beginning of the Sub-Clause, add a new paragraph:

"The Contractor shall participate in commissioning planning meetings, as may be required by the Engineer, in order to refine the commissioning procedures for the Works. The Contractor shall prepare and provide a final approved commissioning plan and programme for the Works in accordance with the Employers Requirements and Specifications".

Delete the original third paragraph and substitute:

"Prior to commencement of the Tests on Completion, the Contractor shall supply to the Engineer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Plant.

The Works shall not be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Engineer has received final operation and maintenance manuals in such detail, and any other manuals or documents required in terms of the Contract as also specified in the Employer's Requirements and/or Specifications for these purposes.

The Tests on Completion shall be carried out in the following sequence:

- (a) Pre-Commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of the Works or Parts of the Works can safely undertake the next stage, (b);
- (b) Commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Parts of the Works can be operated safely and as specified, all under available operating conditions; and
- (c) Trial Operation, which shall demonstrate that the Works or Parts of the Works perform reliably and in accordance with the Contract.

Trial Operation shall not constitute a taking over under Clause 10 [*Employer's Taking Over*]. Any product produced by the Works during trial operation shall be the property of the Employer and provided by the Contractor at no cost to the Employer.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b) or (c) above, the Contractor shall submit a certified report of the results of these Tests to the Engineer.”

CLAUSE 10 – EMPLOYER’S TAKING OVER

Sub-Clause 10.1 – Taking Over of the Works and Sections

At the end of the Sub-Clause, add new paragraph:

Notwithstanding the issue of a Taking-Over Certificate in respect of any Section of the Works pursuant to sub-paragraph (a) above the Contractor shall continue to be responsible for the care of that Section pursuant to Sub-Clause 17.2 hereof.

Sub-Clause 10.2 – Taking Over of Parts of the Works

In the second paragraph delete sub-paragraph (b) and amend sub-paragraph (c) to become sub-paragraph (b).

After the second paragraph, add a new paragraph:

“Notwithstanding the issue of a Taking-Over Certificate in respect of any part of the Works or the deemed taking over of any part of the Works pursuant to sub-paragraph (a) hereof the Contractor shall continue to be liable for the care of such part in accordance with Sub-Clause 17.2 [*Contractor's Care of the Works*].”

Sub-Clause 10.3 – Interference with Tests on Completion

In the first paragraph, second line, after the word “responsible” delete the remainder of the sentence and substitute:

“the Works shall be deemed as being suspended in terms of Sub-Clause 8.8 [*Suspension of Works*].”

Delete the first sentence of the second paragraph, “The Engineer shall ... the Defects Notification Period”.

CLAUSE 11 – DEFECTS LIABILITY**Sub-Clause 11.1 – Completion of Outstanding Work and Remedying Defects**

At the end of the Sub-Clause, add new paragraphs:

“If any work is required to remedy defects or damage for which the Contractor is liable (i.e. any amendment, reconstruction, replacement, renewal, remedying defects, shrinkage or other fault) and the work is such that, in the opinion of the Engineer, it may affect the performance of the Works or any Section or part of the Works, the Engineer may instruct that the Tests on Completion under Clause 9 be repeated to the extent necessary or that such other tests as the Engineer considers necessary be undertaken. The instruction shall be made by notice within 28 days after the amendment, reconstruction, replacement, renewal, remedying defects, shrinkage or other fault has been completed.

The Contractor shall bear all the costs (which shall include the Employer’s costs) and risks related to such repeat or other tests.”

Sub-Clause 11.2 – Cost of Remedying Defects

After sub-paragraph (b) delete “or” and after sub-paragraph (c) delete the full stop and add:

“, or

- (d) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 4.1E, 4.1F and 9.1 or otherwise).”

Sub-Clause 11.3 – Extension of Defects Notification Period

In the first paragraph after “defect or damage.” insert the following:

“In the case of any defect in or damage to the Plant for which the Contractor is liable which requires repair or replacement of the Plant or any part thereof the Defects Notification Period for such repaired or replaced Plant or part shall recommence from the date on which such Plant or part has recommenced operation (and if necessary has passed any repeated Tests on Completion) and shall extend from such date for the Defects Notification Period specified in the Appendix to Tender.”

Sub-Clause 11.6 – Further Tests

At the end of the Sub-Clause, add new paragraphs:

“Notwithstanding the general provisions of this Sub-Clause if any work is required to remedy defects or damage for which the Contractor is liable (i.e. any amendment, reconstruction, replacement, renewal, remedying defects, shrinkage or other fault) and the work is such that, in the opinion of the Engineer, it may affect the performance of the Works or any Section or part of the Works, the Engineer may instruct that the Tests on Completion under Clause 9 [*Tests on Completion*] be repeated to the extent necessary or that such other tests as the Engineer considers necessary be undertaken. The instruction shall be made by notice within 28 days after the amendment, reconstruction, replacement, renewal, remedying defects, shrinkage or other fault has been completed.

The Contractor shall bear all the costs (which shall include the Engineer and Employer's costs) and risks related to such repeat or other tests.

In the case of any defect in the Plant for which the Contractor is liable which requires repair or replacement of the Plant or any part thereof the Defects Notification Period for such repaired or replaced Plant or part shall commence from the date on which such Plant or parts has recommenced operation (and if necessary has passed any repeated Test on Completion) and shall extend from such date for the period specified in the Appendix to tender."

Sub-Clause 11.9 – Performance Certificate

In the first paragraph, second line, between "Performance Certificate" and "to the Contractor", insert "and the Supplementary Performance Certificate".

At the end of the first paragraph, add:

"Notwithstanding the general provisions of this Sub-Clause the Engineer shall, if appropriate, issue a Supplementary Performance Certificate to deal specifically with the Contractor's completion of his obligations under the Contract with regard to Specification Section 47, Landscaping and Rehabilitation. This Supplementary Performance Certificate shall not vitiate any Performance Certificate issued by the Engineer for the Works and shall be issued subject to the landscaping and rehabilitation works achieving "acceptable cover" and the successful completion of the "maintenance period" in accordance with the Specification."

Delete the second and third paragraphs and substitute:

"The Engineer shall issue the Performance Certificates within 28 days after the expiry dates of the Defects Notification Periods or as soon thereafter once the Contractor has supplied all the Contractor's Documents and completed and tested either all the Works, excluding the landscaping and rehabilitation, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

The Engineer shall issue the Supplementary Performance Certificates within 28 days after the Contractor's completion of his obligations under the Contract with regard to Specification Section 47, Landscaping and Rehabilitation. A copy of the Supplementary Performance Certificate shall be issued to the Employer.

Only the Performance Certificate together with the Supplementary Performance Certificate shall be deemed to constitute acceptance of the Works."

CLAUSE 12 – MEASUREMENT AND EVALUATION**Sub-Clause 12.2 – Method of Measurement**

In sub-paragraph (b) between “with the” and “Bill of Quantities”, insert

“Employers Requirements and Specification and the”

and after “Bill of Quantities” delete

“or”

and substitute

“supported by”.

Sub-Clause 12.3 – Evaluation

In the second paragraph between “However, ” and “a new rate”, insert

“unless there is specified within the Contract another method for the adjustment of the time and/or the level of resources required for or caused by a change in an item of work (or changes to a group of items in a part of the Works),”.

In sub-paragraph (a) (ii) delete the value “0.01%” and substitute with the value

“0.25%”.

In sub-paragraph (a) (iii) delete the value “1%” and substitute with the value “5%” and delete

“and”.

Add new sub-paragraph:

“(v) the rate contained within the Contract for this item is not duplicated in another item in the Bill of Quantities for a different quantity;”

After sub-paragraph (a) (v) and before sub-paragraph (b), add:

“and”

After sub-paragraph (b) (iii), add a new sub-paragraph:

“or

(c) in any particular case the specified rate or price is not appropriate because the item of work is not in accordance with the Contract and the Employer grants a concession as provided for under Sub-Clause 7.5 [*Rejection*].”

After the third paragraph, add a new paragraph:

“Provided always that no new rate or price shall be applicable under (a) and/or (b) of this Sub-Clause unless the Contractor applies to the Engineer with reasons within 14 days of a final measurement of that item or within 14 days of the receipt by the Contractor of an instruction for a Variation under Sub-Clause 13.1 [*Right to Vary*] which affects that item, followed 14 days later in each case by the submission to the Engineer of full supporting particulars of the basis for and the detailed calculation of the change in rate or price.”

The Employer has divided the Works into implementable parts (as indicated in the Project Structure Diagram) to accommodate a staged commencement or to exclude parts of the Works. The tender documents and contract award have been structured to afford the Contractor the opportunity to price the defined parts independently of each other and thus negate the need to adjust rates and amounts in the event that parts commence at different times or are excluded. In the event of this occurring, the Contractor shall not be entitled to evaluate and or adjust any of the rates and amounts, as allowed for under this Clause, for works already commenced.

Sub-Clause 12.4 – Omissions

In the fourth last line, after “notice to the Engineer”, delete “accordingly” and substitute “of a claim”.

In the third last line, after “particulars”, insert

*“all in accordance with Sub-Clause 20.1 [*Contractor’s Claims*]”.*

After Sub-Clause 12.4 [Omissions], add a new Sub-Clause:

“Sub-Clause 12.5 – Escrow Documents

Within 14 days of receipt of the Letter of Acceptance and as a condition precedent to the Employer’s approval of the Performance Security in terms of Sub-Clause 4.2 [*Performance Security*], the Contractor shall by pre-arrangement deliver to the Employer the full, unadulterated original of his Tender (including but not limited to all his tender calculations, prices and rates build-ups, schedules, programmes, overhead costs and profit margins, etc.). Upon delivery, these documents will be checked jointly by the Employer, the Engineer and the Contractor and then sealed in a container. Promptly thereafter, this container shall jointly be deposited with an escrow agent, which shall be a financial institution, registered and licensed to trade in South Africa and located in Pretoria. The escrow agent shall hold the documents until payment to the Contractor of the amount certified in the Final Payment Certificate has been received. Until then, the Contractor shall not withdraw the documents from escrow for any reason without the express approval of the Employer.

The Employer and the Engineer shall be given right of access, strictly in the company of the Contractor, to the documents in escrow at any time up to the settlement of the Final Payment Certificate. The purpose of such access shall be to establish the basis of the Contract in any respect that is required during the Contract, including for the evaluation of new rates and prices and any other matter affecting the Contract Price. Such access shall be subject to a written request by the Employer/Engineer to the Contractor stating the reasons why access is required and the aspects

of the Tender that are, or will be under scrutiny, and the Contractor shall then promptly arrange for the joint access thereto.

The Contractor shall be responsible for any charges by the escrow agent for the holding of the documents in escrow and access thereto, which charges will be deemed to be included in the general overhead items of the Bill of Quantities.”

CLAUSE 13 – VARIATIONS AND ADJUSTMENTS

Sub-Clause 13.1 – Right to Vary

In the second paragraph at the end of the first sentence, add

“, or that it will impinge on the Contractor’s design responsibilities”.

Sub-Clause 13.2 – Value Engineering

In the third paragraph, sub-paragraph (a), change “Sub-Clause 4.1” to read “Sub-Clause 4.1A”

Sub-Clause 13.3 – Variation Procedure

In the first paragraph, second line, between “as practicable,” and “either by giving”, insert

“or in the time requested by the Engineer, but in any case not later than 42 days after such request,”.

Sub-Clause 13.7 – Adjustments for Changes in Legislation

At the end of the Sub-Clause, add a new paragraph:

“Provided that for the purpose of this Sub-Clause notices of statutory price increases issued from time to time through the South African Government Gazette shall not constitute a change in Laws and all such price increases shall be deemed to be covered by the provisions of Sub-Clause 13.8 [*Adjustment for Changes in Cost*]. Such statutory price increases shall include, but not be limited to, fuel price increases, minimum wages, licensing fees, border clearance fees, customs and other duties, contributions to Workman’s Compensation and the Unemployment Insurance Fund, and the like.

This provision shall not preclude the Contractor from submitting a claim in terms of the Contract, should the changes in anyone of the said statutory price increases have an impact on the Contractor’s rates and prices that result in an additional change of greater than 0.25% of the Accepted Contract Amount, after taking due account of the compensations under Sub-Clause 13.8.”

Sub-Clause 13.8 – Adjustments for Changes in Cost

Delete the text of this Sub-Clause and substitute:

“Except as hereinafter provided for in this Sub-Clause and subject to Sub-Clause 12.3 [*Evaluation*], the rates and prices in the Contract shall be final and binding throughout the Contract.

Where in this Sub-Clause 13.8 reference is made to the indices published by Statistics South Africa

or by the Steel and Engineering Industries Federation of South Africa (SEIFSA), such indices shall be final and binding on the Parties unless one of the Parties queries any such index to the Engineer within 28 days of its final publication. The Engineer shall employ his best endeavours to obtain clarification, ratification or modification to such index from Statistics South Africa or SEIFSA, whereupon the index shall become final and binding on the Parties. If no such clarification, ratification or modification is received within 90 days of the query to the Engineer then the last published index shall be final and binding on the Parties.

As sole compensation for any increases or decreases in any charges elemental to the rates and prices in the Contract, which increases or decreases may arise subsequent to tendering from whatsoever cause, adjustment of the Contract Price shall be calculated for each monthly statement pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*], the Statement at Completion pursuant to Sub-Clause 14.10 [*Statement at Completion*] and the Final Statement pursuant to Sub-Clause 14.11 [*Application for Final Payment Certificate*] in accordance with the provisions of this Sub-Clause as detailed below:

a) Civil Engineering and Building Works

- (i) The value of the Civil Engineering works portion of the certificate issued in terms of Clause 14.3 hereof, shall be increased or decreased by the amount obtained by multiplying "Ac" defined in (x) below by the Contract Price Adjustment factor (f_1) determined according to the formula:

$$f_1 = (1 - x) \left(a \frac{L_t}{L_o} + b \frac{P_t}{P_o} + c \frac{M_t}{M_o} + d \frac{F_t}{F_o} - 1 \right)$$

in which the symbols have the following meaning:

"x" shall be the proportion of "Ac" which is not subject to adjustment. This proportion shall be 0.15

"a", "b", "c" and "d" shall be the coefficients nominated by the Engineer in the Appendix to Tender, Part C1.1, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of respectively, labour, Contractor's Equipment, materials and fuel. The arithmetical sum of "a", "b", "c" and "d" shall in all cases be unity.

"L" shall be the labour index and shall be the "Consumer Price Index (CPA)" for Limpopo, being the urban area nearest to the Site, and as published by Statistics South Africa in Statistical News Release P0141.1, Table A – Consumer Price Index: Main indices: Geographic indices.

"P" shall be the "Contractor's Equipment index" and shall be the "Plant and equipment" indices as published by Statistics South Africa in Statistical Release, P0151.1 Table 4 – Mining and construction plant and equipment price index.

"M" shall be the "Materials Index" and shall be the "Civil engineering material – total" indices as published by Statistics South Africa in Statistical Release P0151.1 Table 6 – Civil engineering material price index.

"F" shall be the "Fuel Index" and shall be the "Diesel" as published by Statistics South Africa in Statistical Release, P0142.1 Table 1 – PPI for final manufactured goods; Coke, petroleum, chemical, rubber and plastic products.

The suffix "o" denotes the base indices applicable to the base month which shall be the month prior to the month in which falls the closing date for the Tender.

The suffix "t" denotes the current indices applicable to the month in which falls the last day of the period to which the relevant payment certificate relates, which shall not be earlier than the twentieth day of the month unless otherwise agreed by the Engineer in writing.

For the purpose of calculating the adjustment to the value of the relevant certificates, the amount "Ac" shall be determined by the formula:

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

in which the symbols have the following meanings:

"T" shall be the total value of the portion of the certificate under consideration excluding any advance payments before the deduction of any retention monies, delay damages, or repayment of advances and before any adjustments made in terms of this Sub-Clause.

"S" shall be the aggregate of (a), (b) and (c) referred to below and included in "T"

- (a) the value of any work done by Nominated Subcontractor/s and not subject to the Contractor price adjustment provision of the principal Contractor;
- (b) the value of any extra or additional work not subject to CPA;
- (c) the value of any work done against Provisional Sums;

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

"D" shall be the value of work included in "T" done at new rates or prices fixed in terms of Sub-Clause 12.3 [*Evaluation*] where those rates or prices are not based on labour, Contractor's Equipment or material costs in force at the time of tendering. When new rates or prices are based on tendered rates or prices applicable at the base month of the indices, the value of work done at such new rates or prices shall not be included in the value of "D".

"E" shall be the amount included in "T" paid for any daywork executed at current rates plus percentage allowances as set out in Sub-Clause 13.6 [*Adjustments for Changes in Legislation*], where those rates are not based on labour Contractor's Equipment or material costs in force at the time of tendering and indicated in the Daywork Schedule. Generally when Daywork rates are based on tendered rates or on current costs de-escalated to the base month of the indices, the value of work done at these rates shall not be included in the value of "E".

"Ap" shall be the sum of "Ac" amounts determined in terms of this Sub-Clause for all certificates issued in accordance with Clause 14 preceding in time the certificate under consideration.

Save only for additional work or variations ordered to be carried out after the Time for Completion, (as extended, if applicable under Sub-Clause 8.4 [*Extension of Time for Completion*]) if the Contractor fails to complete the Works or any Section thereof within the relevant Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable to the month in which the Time for Completion of that Section expires, or (ii) the current index or price, whichever is more favourable to the Employer.

If any index relevant to any particular certificate is not known at the time the certificate is valued the latest available index shall be used and an adjustment made when the index relevant to that particular certificate is published.

b) Steel Pipes, valves, pipe specials and fittings

- (i) The value apportioned to steel pipes, valves, pipe specials and fittings in the certificate issued in terms of Clause 14.3 hereof, shall be increased or decreased by the amount obtained by multiplying "Ac" defined below by the Contract Price Adjustment factor (f_1) determined according to the formulae:

for supply and delivery items:

$$f_1 = (1 - x) \left(a \frac{L1_t}{L1_o} + b \frac{M_t}{M_o} - 1 \right)$$

Formulae for installation, testing, commissioning and general steel pipes items:

$$f_1 = (1 - x) \left(\frac{L2_t}{L2_o} - 1 \right)$$

in which the symbols have the following meaning:

"x" shall be the proportion of "Ac" which is not subject to adjustment. This proportion shall be 0.15.

"a" and "b" shall be the coefficients nominated by the Engineer in the Appendix to Tender, Part C1.1, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of respectively, labour and materials. The arithmetical sum of "a" and "b" shall in all cases be unity.

"L1" shall be the labour index and shall be the "SEIFSA Index of Actual Labour Cost" as published by SEIFSA in Table C-3, "All Hourly-Paid Employees".

"L2" shall be the labour index and shall be the "SEIFSA Index of Actual Labour Cost (Field Force)" as published by SEIFSA in Table C-3(a), "All Hourly-Paid Employees".

"M" shall be the materials index and shall be the "SEIFSA Merchant Steel Price Index – Plates HR Grade S355JK" as published by SEIFSA in Table E-EX.

The suffix "o" denotes the base indices applicable to the base month which shall be the month prior to the month in which falls the closing date for the Tender.

The suffix "t" denotes the current indices applicable to the month in which falls the last day of the period to which the relevant payment certificate relates, which shall not be earlier than the twentieth day of the month unless otherwise agreed by the Engineer in writing.

For the purpose of calculating the adjustment to the value of the relevant certificates, the amount "Ac" shall be determined by the formula:

$Ac = T - S - D - E - Ap$ in which the symbols have the following meanings:

"T" shall be the total value of the portion of the certificate under consideration excluding any advance payments before the deduction of any retention monies, delay damages, or repayment of advances and before any adjustments made in terms of this Sub-Clause 13.8.

"S" shall be the aggregate of (a), (b) and (c) referred to below and included in "T"

- (a) the value of any work done by Nominated Subcontractor/s and not subject to the Contractor price adjustment provision of the principal Contractor;
- (b) the value of any extra or additional work not subject to CPA;
- (c) the value of any work done against Provisional Sums;

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

"D" shall be the value of work included in "T" done at new rates or prices fixed in terms of Sub-Clause 12.3 [*Evaluation*] where those rates or prices are not based on labour, Contractor's Equipment or material costs in force at the time of tendering. When new rates or prices are based on tendered rates or prices applicable at the base month of the indices, the value of work done at such new rates or prices shall not be included in the value of "D".

"E" shall be the amount included in "T" paid for any daywork executed at current rates plus percentage allowances as set out in Sub-Clause 13.6 [*Daywork*], where those rates are not based on labour Contractor's Equipment or material costs in force at the time of tendering and indicated in the Daywork Schedule. Generally when Daywork rates are based on tendered rates or on current costs de-escalated to the base month of the indices, the value of work done at these rates shall not be included in the value of "E".

"Ap" shall be the sum of "Ac" amounts determined in terms of this Sub-Clause for all certificates issued in accordance with Clause 14 preceding in time the certificate under consideration.

Save only for additional work or variations ordered to be carried out after the Time for Completion, (as extended, if applicable under Sub-Clause 8.4 [*Extension of Time for Completion*]) if the Contractor fails to complete the Works or any Section thereof within the relevant Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable to the month in which the Time for Completion of that Section expires, or (ii) the current index or price, whichever is more favourable to the Employer.

If any index relevant to any particular certificate is not known at the time the certificate is valued the latest available index shall be used and an adjustment made when the index relevant to that particular certificate is published."

c) Mechanical (including Valves) and Electrical Works

- (i) The value of each Mechanical and Electrical portion of the certificate issued in terms of Clause 14.3 hereof, shall be increased or decreased by the amount obtained by multiplying "Ac" defined below by the Contract Price Adjustment factor (f_1) determined according to the formulas:

for supply and delivery items:

$$f_1 = (1 - x) \left(a \frac{L1_t}{L1_o} + b \frac{M_t}{M_o} - 1 \right)$$

for installation, testing, commissioning and general items:

$$f_1 = (1 - x) \left(\frac{L2_t}{L2_o} - 1 \right)$$

in which the symbols have the following meaning:

"x" shall be the proportion of "Ac" which is not subject to adjustment. This proportion shall be 0.10.

"a" and "b" shall be the coefficients nominated by the Employer in the Appendix to Tender, Part C1.1, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of respectively, labour and materials. The arithmetical sum of "a" and "b" shall in all cases be unity.

"L1" shall be the Labour Index and shall be the "SEIFSA Index of Actual Labour Cost" as published by SEIFSA in Table C-3, "All Hourly-Paid Employees".

"L2" shall be the Labour Index and shall be the "SEIFSA Index of Actual Labour Cost (Field Force)" as published by SEIFSA in Table C-3(a), "All Hourly-Paid Employees".

"M" shall be the materials index and shall be the index for "Engineering input price indices" as published by SEIFSA in Table G "Mechanical Engineering" and "Electrical Engineering". There are two defined material components under the material category and shall be calculated independently from each other, based on the actual value incorporated in the payment certificate.

The suffix "o" denotes the base indices applicable to the base month which shall be the month prior to the month in which falls the closing date for the Tender.

The suffix "t" denotes the current indices applicable to the month in which falls the last day of the period to which the relevant payment certificate relates, which shall not be earlier than the twentieth day of the month unless otherwise agreed by the Engineer in writing.

For the purpose of calculating the adjustment to the value of the relevant certificates, the amount "Ac" shall be determined by the formula:

$$Ac = T - S - D - E - Ap \text{ in which the symbols have the following meanings:}$$

"T" shall be the total value of the portion of the certificate under consideration excluding any advance payments before the deduction of any retention monies, delay damages, or repayment of advances and before any adjustments made in terms of this Sub-Clause.

"S" shall be the aggregate of (a), (b) and (c) referred to below and included in "T"

- (a) the value of any work done by Nominated Subcontractor/s and not subject to the Contractor price adjustment provision of the principal Contractor;
- (b) the value of any extra or additional work not subject to CPA;
- (c) the value of any work done against Provisional Sums;

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

"D" shall be the value of work included in "T" done at new rates or prices fixed in terms of Sub-Clause 12.3 [*Evaluation*] where those rates or prices are not based on labour, Contractor's Equipment or material costs in force at the time of tendering. When new rates or prices are based on tendered rates or prices applicable at the base month of the indices, the value of work done at such new rates or prices shall not be included in the value of "D".

"E" shall be the amount included in "T" paid for any daywork executed at current rates plus percentage allowances as set out in Sub-Clause 13.6 [*Daywork*], where those rates are not based on labour Contractor's Equipment or material costs in force at the time of tendering and indicated in the Daywork Schedule. Generally when Daywork rates are based on tendered rates or on current costs de-escalated to the base month of the indices, the value of work done at these rates shall not be included in the value of "E".

"Ap" shall be the sum of "Ac" amounts determined in terms of this Sub-Clause for all certificates issued in accordance with Clause 14 preceding in time the certificate under consideration.

Save only for additional work or variations ordered to be carried out after the Time for Completion, (as extended, if applicable under Sub-Clause 8.4 [*Extension of Time for Completion*]) if the Contractor fails to complete the Works or any Section thereof within the relevant Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable to the month in which the Time for Completion of that Section expires, or (ii) the current index or price, whichever is more favourable to the Employer.

If any index relevant to any particular certificate is not known at the time the certificate is valued, the latest available index shall be used and an adjustment made when the index relevant to that particular certificate is published."

CLAUSE 14 – CONTRACT PRICE AND PAYMENT**Sub-Clause 14.2 – Advance Payment**

In the third paragraph delete the first sentence and substitute:

“The Contractor shall submit to the Engineer the Performance Security required in accordance with Sub-Clause 4.2 [*Performance Security*] and the guarantee in the amount of the advance payment together with a formal written request for the advance payment to be made. Subject to the documents submitted being to the satisfaction of the Engineer he shall submit these to the Employer together with confirmation that the advance payment can be made.”

Delete the fifth paragraph and sub-paragraphs (a) and (b) and substitute:

“The Advance Payment shall be repaid through deductions in Payment Certificates as stated in the Appendix to Tender.”

After the new fifth paragraph, add a new paragraph:

“Unless an extended guarantee is submitted to the Employer 28 days prior to the expiry of the Advance Payment Guarantee, the Employer in his sole discretion will suspend further payments due to the Contractor until such extension evidence is received or deduct the full balance or part thereof from any monies that may have become due to the Contractor.”

Sub-Clause 14.3 – Application for Interim Payment Certificates

In the first paragraph delete

“which shall include the report on progress during this month in accordance with Sub-Clause 4.21 [*Progress Reports*]”.

*In sub-paragraph (f), between “those under” and “Clause 20 [*Claims, Disputes and Arbitration*]”, insert*

“Sub-Clause 2.5 [*Employer’s Claims*] and”.

Sub-Clause 14.7 – Payment

At the end of the Sub-Clause, add new paragraphs:

“The Payment Country shall be the Republic of South Africa.

The Contractor shall supply to the Employer within 28 days after the date of the Letter of Acceptance the following information and documentation in relation to bank transfers, in notarised originals:

- (a) Formal written notice from the authorised and designated representative of the Contractor designating which officials of the Contractor or his individual members are authorised to issue bank instructions on his behalf; and
- (b) Notarised original specimen signatures of the persons named in (a) above and notarised copies of company resolutions so authorising them.”

Sub-Clause 14.8 – Delayed Payment

Delete the second paragraph and substitute:

“These financing charges shall be calculated at an annual rate of 1% above the prime overdraft rate charged by the Standard Bank of South Africa Limited in Pretoria on the date for payment.”

Sub-Clause 14.9 – Payment of Retention Money

Delete the text of this Sub-Clause and substitute:

“When the Engineer has certified that the RFTO status has been achieved for all Sections of the Works to which this status applies, one quarter (25%) of the Retention Money shall be certified by the Engineer for payment to the Contractor. A further one quarter (25%) of the Retention Money shall be certified by the Engineer for payment to the Contractor when the Engineer has certified that the RFO status has been achieved for all Sections of the Works to which this status applies.

Promptly after the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor.

However, if any work remains to be executed under Clause 11 [*Defects Liability*] or Clause 11.10 [*Unfulfilled Obligations*], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.”

Sub-Clause 14.11 – Application for Final Payment Certificate

After the second paragraph insert a new paragraph:

“In the event that the Engineer has not communicated any comment to or requested any further information from the Contractor within 28 days after receiving the draft final statement then this draft shall be deemed to be the Final Statement. In the event that the Engineer has queried aspects of the draft final statement and prepares an interim payment certificate for the remainder, this shall be submitted to the Employer within 56 days of receipt of the draft.”

In the last paragraph, fourth line, delete “for the agreed parts of the draft final statement” and substitute:

“under Sub-Clause 14.6 [*Issue of Interim Payment Certificate*] for the amount which he considers to be due to the Contractor”.

CLAUSE 15 – TERMINATION BY EMPLOYER**Sub-Clause 15.2 Termination by Employer**

After the second paragraph insert a new paragraph:

“Without prejudice to the Employer's rights under this Sub-Clause, the Employer may at any time after he has become entitled to the maximum amount of delay damages under Sub-Clause 8.7 [*Delay Damages*] and provided the Taking Over-Certificate in respect of the whole of the Works has not been issued, by notice in writing to the Contractor require him to complete any outstanding

part of the Works. Such notice shall fix a final Time for Completion of the Works including passing the Tests on Completion which shall be reasonable having regard to such delay as has already occurred and the extent of work required to achieve completion.

If the Contractor fails to complete the Works within such time and this is not due to a cause for which the Employer is responsible, the Employer may by further notice to the Contractor either:

- (a) require the Contractor to complete; or
- (b) may himself complete the Works and, provided that he does so in a reasonable manner, all costs so incurred shall be for the Contractor's account; or
- (c) terminate the Contract in whole or in part under this Sub-Clause without prejudice to his other rights and remedies under the Contract or otherwise."

CLAUSE 16 – SUSPENSION AND TERMINATION BY CONTRACTOR

Sub-Clause 16.2 - Termination by Contractor

Delete from Sub-Clause 16.2(e) "Sub-Clause 1.6 [Contract Agreement] or"

Sub-Clause 16.4 – Payment on Termination

Delete the text of paragraph (c) and substitute:

"pay to the Contractor the amount of any loss or damage sustained by the Contractor as a direct result of this termination excluding any indirect or consequential loss or damage including loss of profit, and/or loss of contract (save where (i) the Contractor is expressly entitled to profit under any clause in these conditions or (ii) the Employer is guilty of fraud, deliberate default or reckless misconduct)."

CLAUSE 17– RISK AND RESPONSIBILITY

Sub-Clause 17.2 – Contractor's Care of the Works

In the final sentence of the first paragraph, delete "then pass to the Employer" and substitute:

"remains with the Contractor until the issue of a Taking-Over Certificate for the whole of the Works"

Sub-Clause 17.3 – Employer's Risks

In sub-paragraph (h) between "nature" and "which" insert

"other than climatic conditions or conditions arising as a consequence of climatic conditions, "

Sub-Clause 17.4 – Consequences of Employer's Risks

In the first paragraph delete "promptly" and substitute:

", within 7 days of becoming aware, or when he ought reasonably to have become aware, of the loss or damage,"

Sub-Clause 17.6 – Limitation of Liability

In the first paragraph, delete “Sub-Clause 16.4 [Payment on Termination] and Sub-Clause 17.1 [Indemnities]”, and substitute:

“Sub-Clause 17.1 [Indemnities] and any provision in the Contract providing for (i) the payment of delay damages or (ii) expressly entitling the Contractor to profit”

CLAUSE 18 – INSURANCE

Delete the titles and text of all the Sub-Clauses and substitute:

“Sub-Clause 18.1 – Insurance of Works

Notwithstanding anything contained in this Contract and without limiting the obligations, liabilities and responsibilities of the Contractor and Subcontractors in any way whatsoever (including but not limited to any requirement for the provision by the Contract for any other insurances), the Employer shall effect and maintain as appropriate in the joint names of the Employer, the Contractor and, where relevant, Subcontractors the following insurances which are subject to the terms, limits, exceptions and conditions of the Policy/s on the basis outlined in the Summary in Annexure C1.2-1:

- (a) The Works together with Plant and Materials for incorporation therein and all Temporary Works including Contract Works SASRIA.

The policy will provide cover against accidental physical loss or damage and will be subject to the normal terms, exceptions and conditions applicable to this type of insurance but will specifically exclude any loss or damage to any part of the property insured which is itself defective in workmanship, material, design, plan or specification and will also exclude shipment / transit to Site in respect of Plant & Materials for incorporation in the Works. Cover will incept once delivered, unloaded and checked on Site.

- (b) Public Liability providing cover against legal liability for accidental death of or injury to third party person and accidental loss of or damage to third party property arising out of or in connection with the Contractor’s performance of the Contract.

The Employer shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor and / or Subcontractors are liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor and / or Subcontractors in the course of any other operations in terms of the Contract (including those under Clause 11 [Defects Liability])

The Contractor will be liable for the amount of the Deductible in respect of any claim made by or against the Contractor or Subcontractors under the insurances effected by the Employer.

The Deductibles for which the Contractor is responsible and which are applicable in respect of each and every occurrence or series of occurrences attributable to one source or origin cause giving rise to loss or damage or liability identifiable are shown in Annexure C1.2-1.

Sub-Clause 18.2 – Payment of Contract Works Insurance and Public Liability Claims

Any amount which becomes payable to the Contractor as a result of a claim under the Contract Works Insurance shall be paid net of the Deductible to the Employer who shall pay the Contractor from the proceeds of such payment upon rectification, repair or reinstatement of the loss or damage, but this provision shall not in any way affect the Contractor's obligations, liabilities or responsibilities in terms of the Contract.

In respect of any amount which becomes payable to a Third Party as a result of a claim under the Public Liability Insurance the Contractor or any of his Subcontractors shall be required to pay the amount of the appropriate deductible to the Insurer to facilitate the settlement of the Third Party claim.

Sub-Clause 18.3 – Responsibility for Amounts not Recovered

Any amounts not insured or not recovered, including the Deductibles, from the insurers in respect of the Contract Works and Public Liability insurance shall subject to the provisions herein be borne by the Employer or the Contractor in accordance with the responsibilities under Clause 17.

Sub-Clause 18.4 – Adequacy of Insurances

The Employer and where relevant the Contractor shall notify the Employer's Insurance Broker of any change in the nature, extent or programme for execution of the Works to ensure that the insurances shall at all times be in accordance with the terms of the Contract. No variation shall be made to the insurances by either the Employer or the Contractor that would reduce the indemnity provided.

The Contractor may effect at his own cost any additional insurance to that effected by the Employer which he deems necessary to his own interests. The Employer reserves the right to call for full information regarding insurance costs included by the Contractor.

Sub-Clause 18.5 – Remedy on Employer's Failure to Insure

If and so far as the Employer fails to effect and keep in force any of the insurances referred to in Sub-Clause 18.1 [*Insurance of Works*], then the Contractor may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and add the amount so paid to any monies due or to become due to the Contractor, or recover the same as a debt due from the Employer.

Sub-Clause 18.6 – Reporting of Insurance Claims

The Contractor shall immediately, in accordance with the procedures to be agreed with the Insurers and the Employer's Insurance Broker, in addition to any statutory requirements or other requirements contained in the insurance report all incidents which may give rise to claims in terms of the Contract Works and Public Liability insurance and report all loss or damage to the Works or any part thereof or to any Materials or Plant for incorporation therein to the Employer's Insurance Broker, with a copy to the Engineer.

The Contractor shall complete the incident report form available from the Employer's Insurance Brokers to whom the form must be returned without delay.

The Contractor shall negotiate settlement of claims with the Insurers through the Employer's Insurance Broker and shall when required to do so obtain the Employer's approval of such settlement.

The Employer, the Employer's Insurance Broker and Insurers shall have the right to make all and any enquiries on the Site of the Works or elsewhere as to the cause and result of any such occurrence and the Contractor and / or Subcontractor shall co-operate in the carrying out of such enquiries.

The Contractor shall be liable to the Employer for the price of any work done or of Materials and Plant to be incorporated into the Works paid to him by the Employer which would have been recoverable from the insurers under the policy of insurance had it not been for the failure of the Contractor to comply with the obligations herein contained.

Any such price paid by the Employer shall be considered as a debt due from the Contractor to the Employer and as due and payable for the purpose of Sub-Clause 14.7 [*Payment*].

Sub-Clause 18.7 – Contractor's Insurances

Notwithstanding anything elsewhere contained in this Contract and without limiting the obligations, liabilities and responsibilities of the Contractor and/or Subcontractor in any way whatsoever (including but not limited to any requirement for the provision by the Contract for any other insurances) the Contractor and / or Subcontractor shall, for the duration of the Contract, effect and maintain as appropriate in the joint names of the Employer, the Contractor and where relevant Subcontractor the following insurances:

(i) Insurance of Contractor's Equipment

The Contractor without limiting his obligations and responsibilities under Clause 17 shall insure the Contractor's Equipment and all other things (other than materials and Plant for incorporation in the Works) brought onto the Site by the Contractor as well as existing and new chattels against all risks of loss or damage for a sum sufficient to provide for their replacement at Site. Such insurances shall be extended to include SASRIA (Riot) insurance.

(ii) Insurance of Contractor's Watercraft / Vessel and Associated Liabilities

The Contractor shall insure any watercraft / vessel (whether self-propelled or towed) including any construction apparatus and equipment mounted on or attached thereto or carried thereon which is owned, leased, chartered or used and operated by the Contractor or any other party on the Contractor's behalf for the execution of the Works in respect of both material damage (including wreckage removal and salvage charges) and all liabilities in respect of loss of or damage to any other vessel or property whatsoever, loss of life, personal injury and illness, including payment for life salvage, and attempt or actual raising, removal or destruction of the wreck of such watercraft / vessel and any construction apparatus and equipment mounted on or attached thereto or carried thereon or any neglect or failure to raise, remove or destroy the same arising out of such use with a limit of indemnity of not less than R10 000 000 (Ten million Rand) for any one occurrence.

(iii) Off Site Insurance

Where the Contract involves manufacturing and / or fabrication of the Works or parts thereof at premises other than at the Site the Contractor shall satisfy the Employer that all materials and Plant for incorporation in the Works are adequately insured during manufacture and / or fabrication and during shipment and/or transit to the Site. In the case of shipment by sea the Contractor shall ensure that the policy of marine insurance contains a Marine Contribution Clause in like manner to the insurance referred to in Annexure C1.2-1. In the event of the Employer having an insurable interest in such materials and Plant during manufacture or fabrication and shipment, then such interest shall be included in the relevant policies of insurance.

(iv) Motor Vehicle Liability Insurance

The Contractor shall, in addition to any compulsory insurance required in terms of legislation and without limiting his obligations and responsibilities, insure against liabilities in respect of motor vehicles and items of mobile equipment whilst not operating as a tool of trade and including Passenger Liability indemnity with a limit of indemnity of not less than R10 000 000 (Ten million Rand) for any one occurrence.

(v) Insurance Against Accidents to Workmen

The Contractor shall also insure against any liability under the Compensation for Occupational Injuries and Diseases Act of 1993 (COIDA) as may be amended and in compliance with the provisions of the Occupational Health and Safety Act No 85 of 1993 as may be amended and shall further ensure that every Subcontractor (whether nominated or otherwise) has insured his Workmen in terms of this legislation.

The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy. The Contractor shall require such Subcontractor to produce to the Employer, when requested, evidence of compliance with the aforementioned Acts and the receipt for the payment of the current premium / levy.

(vi) Employer's Liability Insurance

In addition to the insurance required in terms of Sub-Clause 18.7 iv) the Contractor shall effect Employer's Liability insurance with a limit of indemnity of not less than R5 000 000 (Five Million Rand) and shall include the name of the Employer as joint insured.

(vii) Unemployment Insurance Act of 1966 as amended

The Contractor shall provide insurance in terms of this legislation.

(viii) Professional Indemnity Insurance in respect of the Contractor's design obligations with a limit of indemnity of not less than the amount as specified in Annexure C1.2-1.

Sub-Clause 18.8 – Evidence and Terms of the Contractor’s Insurances

The Contractor shall effect all insurances for which he is responsible with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and he shall provide evidence to the Employer prior to the commencement of work at the Site that the insurances required under the Contract have been effected and shall within 60 days of the Commencement Date, and thereafter within 30 days of each renewal date or when required by the Employer, provide to the Employer the insurance policies then in force together with evidence of insurance in the form of receipts for payment of the premiums for the current period. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the terms agreed prior to the issue of the Letter of Acceptance.

Sub-Clause 18.9 – Remedy on Contractor’s Failure to Insure

If the Contractor or any Subcontractor fails to effect and keep in force any of the insurances required to be effected under the Contract, or fails to provide the policies and receipts of premium payments to the Employer within the period or at the times required by Sub-Clause 18.8 [*Evidence and Terms of the Contractor’s Insurances*], then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

Sub-Clause 18.10 – Compliance with Policy Conditions

In the event of the Contractor or anyone with whom he contracts for the purposes of carrying out, completing and rectifying any defect in the Works failing to comply with the Conditions imposed on them by the policies of insurance effected pursuant to the Contract, the Contractor shall indemnify the Employer against all losses, costs (including but not limited to legal costs) and claims arising from such failure and the Employer shall so indemnify the Contractor against failure of the Employer to comply with any conditions imposed on him by such conditions of insurance except where the Employer’s failure to comply with the said conditions is attributable to the Contractor’s failure to meet his obligations to the Employer under the Contract in which case the Contractor’s indemnity to the Employer herein contained shall extend to his failure.

Sub-Clause 18.11 – Subcontractors

The Contractor shall:

- (a) ensure that all potential and appointed Subcontractors are aware of the whole content of Clause 18;
- (b) enforce compliance by Subcontractors with the whole of Clause 18; and
- (c) ensure that all potential and appointed Subcontractors have arranged insurances in a like for like manner.

Sub-Clause 18.12 – General Requirements for Insurances – Ensure that the Cost of Risk is Reduced to a Minimum

The Contractor's obligations under the Contract and those imposed by any insurance policies of which the Contractor (and Subcontractors) and the Employer are or are required to be insured by the Contract and to keeping incidents of loss or damage to the Works and any movable or immovable property or injury (including death and disease) to any person in the course of performing the Contract to the cost effective minimum possible, the Contractor shall and shall make certain his Subcontractors comply with the Summary of Insurances referred to in Annexure C1.2-1 of the Instructions to Tenderers to ensure that the cost of risk and loss is reduced to a minimum and to further ensure the most cost effective insurance coverage."

CLAUSE 19 – FORCE MAJEURE**Sub-Clause 19.2 – Notice of Force Majeure**

*In the first paragraph, second line, between "Party" and "of", insert
", and the Engineer, "*

*In the first paragraph, fourth line, delete "within 14 days" and substitute
"forthwith".*

CLAUSE 20 – CLAIMS, DISPUTES AND ARBITRATION**Sub-Clause 20.1 – Contractor's Claims**

Amend the Sub-Clause number to "20.1A".

Delete the text of the Sub-Clause and substitute:

"If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, he shall comply with the following procedures:

(a) Notices

The Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware of the event or circumstance. The notice shall as a minimum:

- (i) state that it is given under this Sub-Clause;
- (ii) describe the event or circumstance giving rise to the claim;

- (iii) state the contractual or other basis of the claim on which the Contractor intends to rely, stating the relevant Clause(s) of the Conditions of Contract where applicable; and
- (iv) state any possible consequences that may result from the event or circumstance, which consequences may entitle the Contractor to an extension of the Time for Completion and/or additional payment. Such consequences, which are to be established under b) and c) below may include, but not be limited to:
 - the direct impacts on time and costs; and/or
 - indirect impacts such as additional resources required to complete the Works that may be construed as an acceleration.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. If the Contractor has submitted his notice of claim within the 28-day limit, then he shall proceed in accordance with the provisions of this Sub-Clause.

(b) Contemporary records

Following the giving of notice, the Contractor shall keep such contemporary records as may be necessary to substantiate any claim. Contemporary records shall be kept on Site unless agreed otherwise with the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Engineer to inspect all these records and shall (if instructed) submit copies to the Engineer.

(c) Details and particulars

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the contractual or other basis of the claim and of the extension of time and/or additional payment claimed. The Contractor shall also provide the Engineer with any additional particulars which the Engineer may reasonably require.

If the Contractor fails to provide the contractual or other basis of the claim within the said 42 days or other time allowed and approved by the Engineer, the notice given under paragraph (a) above shall be deemed to have lapsed and shall no longer be considered as a valid notice. If the event or circumstance giving rise to the claim has a continuing effect:

- (i) the fully detailed claim shall be considered as interim;
- (ii) the Contractor shall send further interim claims at 28-day intervals, giving the accumulated delay and/or amount claimed, and such additional particulars as the Engineer may reasonably require; and
- (iii) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

(d) Engineer's response

Within 42 days after receiving a fully detailed claim or any further particulars requested by the Engineer, or within such other period as may be agreed by the Engineer and the Contractor, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract with detailed comments. He may also request any necessary additional particulars, but shall nevertheless give his response on the contractual or other aspects of the claim within the 42 days after receiving the fully detailed claim from the Contractor.

If the Engineer does not respond in accordance with the foregoing procedures and timetable, either Party may consider that the claim has been rejected by the Engineer, and either Party may refer the matter to the DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*].

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If either Party is dissatisfied with the determination of the Engineer, either Party may, within 28 days after receiving the determination, issue to the Engineer and the other Party, a notice of dissatisfaction and thereafter proceed in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. If no notice of dissatisfaction is issued by either Party within the said 28 days, the determination of the Engineer shall be deemed to have been accepted by both Parties.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under paragraphs (a) and/or (c) of this Sub-Clause."

After Sub-Clause 20.1A (as re-numbered), add a new Sub-Clause:

"Sub-Clause 20.1B – Subcontract References to the Dispute Adjudication Board

In the event that any dispute should arise between the Contractor and a Subcontractor before the issue to the Contractor of the Performance Certificate, which dispute the Contractor considers may result in a dispute between the Contractor and the Employer, the Contractor may make application to the Employer requesting that such dispute be adjudicated by the DAB. The application shall be subject to the Contractor submitting to the Employer a detailed proposal identifying the nature of the dispute and shall demonstrate that, on a balance of probabilities, the matter would result in a dispute between the Contractor and the Employer.

The Contractor's proposal shall contain:

- (i) a joint statement from the Contractor and the Subcontractor confirming the issues that are in dispute;
- (ii) the Subcontractor's written consent that the matter be so adjudicated in substitution of any other dispute resolution mechanisms that may be specified in the subcontract agreement;
- (iii) a written undertaking by the Subcontractor to sign a Dispute Adjudication Agreement as a co-signatory with the Contractor;
- (iv) a written undertaking by the Contractor and the Subcontractor that the costs of the DAB regarding the matter shall be apportioned equally among the Employer, the Contractor and the Subcontractor.

If the Employer, having evaluated the Contractor's proposal, agrees with the Contractor that, on a balance of probabilities, the matter between a Subcontractor and the Contractor will result in a dispute between the Contractor and the Employer, then the Contractor will be entitled to submit the matter to the DAB and proceed in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] for adjudication of the matter:

- (a) as between the Contractor and the Subcontractor in accordance with the subcontract agreement; and
- (b) as between the Contractor and the Employer in accordance with the Contract respectively, both positions being considered simultaneously as parts of the same adjudication.

Provided always that:

- (i) the Employer's agreement to the process is given in writing in respect of each particular matter thus submitted;
- (ii) the Contractor makes available to the DAB all relevant and requested documentation, facts and details to facilitate the expeditious resolution of the matter;
- (iii) The DAB will review the matter and if accepted as falling within its jurisdiction under this Sub-Clause, the procedure specified under Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] for the entering of a Dispute Adjudication Agreement shall apply *mutatis mutandis* to the adjudication of the matter; and
- (iv) the DAB's respective decisions in respect of each agreement (Contract and Subcontract respectively) shall be given the same effect and force of execution under each agreement (Contract and Subcontract respectively) as is specified for the DAB in respect of a particular dispute between the Contractor and the Employer under the Contract in accordance with these Conditions.

This Sub-Clause shall not derogate from any other rights, obligations, powers and procedures in the Contract regarding the DAB duly constituted in terms of the Contract."

Sub-Clause 20.4 – Obtaining Dispute Adjudication Board's Decision

Delete the first paragraph and substitute:

"If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out

of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may, within 28 days of issuing the notice of dissatisfaction under Sub-Clause 20.1, refer the dispute to the DAB for its decision by submitting a written statement of its case (the "Statement of Case") to the DAB, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause. If the dissatisfied Party has not formally referred the matter to the DAB within the said 28-day period, the notice of dissatisfaction shall be deemed to have lapsed and the dispute deemed to have been finally resolved.

The "Statement of Case" shall include as a minimum:

- (a) a clear and concise description of each of the issues in dispute submitted to the DAB for a decision;
- (b) identification of the relevant items that are not in dispute;
- (c) a fully argued statement of the referring Party's position on each issue in dispute;
- (d) the allegations of fact on which the Party relies;
- (e) the contentions of contract and/or law on which the Party relies;
- (f) the relief sought under the Contract;
- (g) any other support for the referring Party's position such as documents, drawings, schedules and correspondence (including, where applicable, a copy of the certificate, determination, instruction, opinion or valuation of the Engineer); and
- (h) a statement of what the referring Party requests the DAB to decide.

The other Party shall respond to the "Statement of Case" in writing (the "Response"). The Response shall include as a minimum:

- (a) a fully argued statement of the responding Party's position on each issue in dispute;
- (b) identification of the relevant items that, in his opinion, are not in dispute;
- (c) the allegations of fact on which the responding Party relies;
- (d) the contentions of contract and/or law on which the responding Party relies;
- (e) any support for its position such as documentation, drawings, schedules and correspondence; and
- (f) a statement of what the responding Party requests the DAB to decide."

In the second line of the second paragraph delete

"it"

and substitute

"the "Statement of Case".

In the first line of the third paragraph delete from “Both Parties” to “additional information” and substitute:

“The Procedural Rules for the DAB included in the Annex to the General Conditions of Dispute Adjudication Agreement identify the programme to be followed for any dispute that may be referred to the DAB. With due regard to this programme both Parties shall make available to the DAB the initial “Statement of Case” and “Response” as detailed in this Sub-Clause and the Procedural Rules and all such additional information”

*In the third line of the fourth paragraph between “reasoned” and “and shall”, insert
“and in accordance with the Contract”.*

At the end of the fifth paragraph, add a new paragraph:

“In either case, the dissatisfied Party shall send a copy of the notice to the chairman of the DAB.”

At the end of the Sub-Clause, add a new paragraph:

“Notwithstanding anything contained in this Sub-Clause the process described will not preclude either Party from approaching the other Party in an attempt to reach amicable settlement.”

Sub-Clause 20.6 – Arbitration

In the first paragraph, line two, delete “international”.

*In sub-paragraph (a), delete “Arbitration of the International Chamber of Commerce” and substitute
“the Association of Arbitrators (Southern Africa)”.*

Add the following new sub-paragraph:

d) “The place of Arbitration shall be Johannesburg, Republic of South Africa.”

Add the following new Clauses:

“CLAUSE 21 – SECTION 37(2) UNDERTAKING

The Parties record that, in terms of the Contract, the Employer shall not be liable in respect of any breach of the Occupational Health & Safety Act by the Contractor or its Subcontractors and any employees or agents of the Contractor and/or any Subcontractor.

The Contractor shall provide a Section 37(2) Undertaking and shall deliver a duly signed Section 37(2) Undertaking to the Engineer prior to such entity entering the Site.

The Contractor acknowledges that this Section 37(2) Undertaking constitutes an agreement in terms of Section 37(2) of the Occupational Health and Safety Act, in terms of which, all responsibility

(both civil and criminal) for health and safety matters in relation to the performance of the Works by the Contractor and any of its employees, shall be that of the Contractor.

In accepting such responsibility as set out in herein, the Contractor shall indemnify the Employer against any loss, damage, injury or death, however caused, to the Contractor or to any Subcontractors or any employees or agents of the Contractor and/or any Subcontractor and shall hold the Employer harmless against all and any claims, losses, damages, liability, costs and expenses of whatsoever nature, which the Employer may, at any time sustain or incur arising out of the aforementioned circumstances; provided that such loss, damage, injury or death is not caused by the wilful action or omission or gross negligence of the Employer.

CLAUSE 22 – GENERAL

Sub-Clause 22.1 – Entire Agreement

This Contract contains the entire agreement between the Parties as to the subject matter hereof.

Sub-Clause 22.2 – No Claim

No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Contract.

Sub-Clause 22.3 – No Waiver

No failure by any Party to enforce any provision of this Contract shall constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

Sub-Clause 22.4 – Non-variation

No agreement to vary, add to or cancel this Contract shall be of any force or effect unless reduced to writing and signed on behalf of the Parties to this Contract.

Sub-Clause 22.5 – Cession

No Party may cede any of its rights or delegate any of its obligations under this Contract without the prior written consent of the other Party to this Contract.

Sub-Clause 22.6 – No Partnership

Nothing in this Contract shall constitute or be deemed to constitute a partnership between any of the Parties, and none of them shall have the authority to bind the others in any way.

Sub-Clause 22.7 – Consent to Jurisdiction

The Parties hereby consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in connection with any action which any Party to this Contract may institute in connection with this Contract.

Sub-Clause 22.8 – Subsequent Maintenance Contracts

The Contractor, on the instruction of the Engineer, shall instruct his mechanical and electrical suppliers and/or subcontractors (as may be appropriate), based upon a Letter of Intent included in the Tender, to enter into negotiations with the operator of the Works for the implementation of maintenance contracts for the mechanical and electrical works, as may be required by the operator. These maintenance contracts shall come into force immediately following the Expiry Date or at such other time as may be agreed between the individual suppliers and/or subcontractors and the operator and shall endure for such periods of time as may be agreed between the individual suppliers and/or subcontractors and the operator.

To the extent that any manufacturers' and/or suppliers' warranties and/or guarantees, which were vested in the Contractor, are still valid after the Expiry Date these are to be ceded immediately following the Expiry Date to the operator by the Contractor and the relevant warrantor or guarantor. The terms and conditions of such cessions shall form a part of the maintenance contracts negotiated and agreed between the parties concerned. Should any extended warranties and/or guarantees from suppliers and /or subcontractors be available on commercially reasonable terms and conditions these may also form a part of the maintenance contract negotiations.”

ANNEXURE C1.2-1: SUMMARY OF CONTRACT WORKS, SASRIA (RIOT), PUBLIC LIABILITY AND PROFESSIONAL INDEMNITY INSURANCES

A. CONTRACT WORKS AND SASRIA (RIOT)

INSURED EVENTS:	Physical loss of or damage to the Permanent Works, Materials and Plant for incorporation therein and all Temporary Works
COVER INCLUDES:	<p>Costs and Expenses – (Indemnifiable/No Indemnifiable loss or damage to the Works) – Limit R20 000 000.</p> <p>Damage as a consequence of Defective Design, Materials and Workmanship to other parts or items to the Property Insured.</p> <p>Other Property Insured – limit R20 000 000.</p> <p>Road Reserve and Servitude Indemnity – R10 000 000.</p> <p>Leak Search Costs – R10 000 000 per event per test section of the pipeline.</p> <p>Abandonment of Excavated Trench – R10 000 000 per hole.</p> <p>Claims Preparation Costs – R1 000 000.</p> <p>Removal to place of safety.</p> <p>Employer’s Maintenance during Defects Liability Period.</p> <p>Records – R250 000.</p> <p>Testing / Commissioning – 120 days (not necessarily consecutive) between Ready for Commissioning and Ready for Operation.</p> <p>Removal to gain access – R10 000.</p> <p>Work Away / Manufacturing Premises.</p> <p>Fire Brigade Charges / Public Authorities Charges – limit R10 000 000.</p> <p>Public Authority Reinstatement (reinstatement of property to comply with Public Authority regulations/by-laws) – R10 000 000.</p> <p>Temporary repairs (in the interest of safety to avoid further damages).</p> <p>Off Site Storage.</p> <p>Escalation during period of reinstatement – 30% of the sum insured.</p> <p>Escalation during construction period – 30% of the sum insured.</p> <p>Devaluation / Revaluation – 30% of the sum insured.</p>

Expediting Costs –50% of loss exceeding R50 000.

Marine Contribution Clause.

Automatic Reinstatement of Sum Insured.

72 Hour Deductible Clause (In consequence of storm (which term shall include rain wind tempest or flood) or earthquake or earth tremor).

Beneficial Occupation.

SASRIA.

DEDUCTIBLES:

Under Contract Works Insurance:

In respect of loss or damage due to:

- | | |
|---|----------|
| 1. Storm (which term shall include rain, tempest, flood) water damage, earthquake, earth tremor, subsidence, landslip or collapse | R500 000 |
| 2. Testing or Commissioning | R500 000 |
| 3. Removal to Gain Access | R150 000 |
| 4. Leak Search Costs | R150 000 |
| 5. Abandonment of Hole | R500 000 |
| 6. Any other cause | R50 000 |

Under SASRIA: 0.10% of the Contract Value, subject to a minimum **R2 500**, and a maximum **R25 000** in respect of theft claims only.

Under any other Insurance: Deductibles shall be as specified in such Insurance Policy.

B. PUBLIC LIABILITY

INSURED EVENTS:

Legal Liability to pay damages and claimant's costs in connection therewith arising out of the performance of the Contractor within the territorial limits and in accordance with the laws and procedures of the Republic of South Africa.

INDEMNITY LIMIT:

R200 000 000 any one event / loss (unlimited in the period of insurance).

EXTENSIONS:

Statutory Legal Defence Costs, Wrongful Arrest,

Assault, Defamation and Discharge	R2 000 000 each and every Occurrence
Claims Preparation Costs	R2 000 000 each and every Occurrence
Developers & Contractors	
Removal of Support	R50 000 000 in the aggregate
Employers Liability	R100 000 000 each and every Occurrence

TERRITORIAL LIMITS: Anywhere in the world but excluding USA and Canada and any territory operating under the laws of or subject to the Jurisdiction of Courts of the aforementioned territories.

DEDUCTIBLES: The deductible for any one event shall be:

Blasting (in the aggregate)	R100 000
Spread of Fire	R100 000
Accidental Removal / Weakening/ Interference with Support and/or Shock or Vibration	R 50 000
All other Loss or Damage to Property	R 25 000

C. PROFESSIONAL INDEMNITY

INSURED EVENTS: Provides indemnity in respect of compensatory damages which becomes legally liable to be paid in consequence of any actual or alleged neglect, error or omission in the conduct or execution of any professional activities or duties.

INDEMNITY LIMIT: R100 000 000 in the aggregate for the Period of Insurance but not exceeding R50 000 000 any one claim including Costs and Expenses.

EXTENSIONS: Claims Preparation Costs R1 000 000 each and every Occurrence.

DEDUCTIBLES: The deductible for any one occurrence shall be: R5 000 000

NOTE: This is a Summary of the Insurances to be effected as stated in Clause 18 and is provided herein for the guidance of Tenderers. The exact terms and conditions will be set out in the appropriate policies when these are issued (including limitations to open trench works).

ANNEXURE C1.2-2: CONTRACT AGREEMENT

THIS AGREEMENT made the day of 20.....
between

**TRANS-CALEDON TUNNEL AUTHORITY
(TCTA)**

of Tuinhof Building, Stinkhout Wing, 265 West Avenue, Centurion, 0157

(hereinafter called “the Employer”) of the one part and

[CONTRACTOR NAME]

a company existing and registered under the Laws of South Africa, having its registered office located at [Contractor’s physical address]

(hereinafter collectively called “the Contractor”) of the other part.

WHEREAS the Employer desires that certain Works known as:

TENDER NO 054/2024/PMID/MCWAP2/RFB

should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein.

The Employer and the Contractor agree as follows:

In this Agreement words and expressions shall have the same meaning(s) as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

The following documents shall be deemed to form and be read and construed as part of this Agreement:

- (a) The Letter of Acceptance, dated [TBA]
- The Letter of Tender and Appendix to Tender, dated [TBA]

The Contract Data incorporating:

- a. The Particular Conditions
- b. The General Conditions

The Specification

The Drawings

The priced Bill of Quantities

The Returnable Documents and completed Returnable Schedules

The Site Data

In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and the remedying of defects therein, in conformity in all respects with the provisions of the Contract.

The Employer hereby covenants to pay to the Contractor in consideration of the execution and completion of the Works and remedying the defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first before written.

AT
PLACE

.....
SIGNATURE

.....
SIGNATURE

.....
NAME

.....
NAME

for and on behalf of the Employer in the presence of

for and on behalf of the Contractor in the presence of

Witness:
.....

Witness:
.....

Name:
.....

Name:
.....

Address:
.....
.....

Address:
.....
.....

Date:
.....

Date:
.....

ANNEXURE C1.2-3: FORM OF PERFORMANCE SECURITY – DEMAND GUARANTEE

To be provided to:

The Chief Executive

TCTA

Tuinhof Building

Stinkhout Wing

265 West Street

CENTURION, 0157

South Africa

PERFORMANCE SECURITY No.

WHEREAS the TCTA has awarded **TENDER NO 054/2024/PMID/MCWAP2/RFB** to

.....

(hereinafter called "the Contractor")

and whereas under the Contract the sum of

R..... (in figures)

R.....(in words)

(the "Guaranteed Amount(s)") has to be secured in respect of the performance of the Contract by the Contractor.

We, the undersigned

.....

and

.....

(Name 1)

(Name 2)

acting herein in our respective capacities as

..... and

(Position 1) (Position 2)

of

(Institution)

(hereinafter called "the Bank")

and being duly authorised to sign and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors of the Bank, a certified copy of which is annexed hereto, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that:

1. The Bank will:
 - 1.1 pay to TCTA within 10 days from receipt of TCTA’s first written demand and without proof of any breach of contract by the Contractor other than the certificate specified in Clause 1.2 below, amounts not exceeding the Guaranteed Amount(s);
 - 1.2 make such payment to TCTA upon receipt by the Bank of a certificate signed by TCTA certifying that the Contractor, in the opinion of TCTA, as at the date of issue of such certificate is in breach of its contractual obligations to TCTA under the Contract;
 - 1.3 make payment in the currency of the Contract of the Guaranteed Amount up to the maximum amount stipulated in the demand; and
 - 1.4 make such payment to TCTA at an address within the Republic of South Africa designated by TCTA for this purpose.
2. The demand for payment together with this guarantee shall constitute *prima facie* proof of the Bank’s indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of TCTA to enforce strict or substantial compliance by the Contractor with his obligations nor any act, conduct, or omission by TCTA will discharge the Bank from liability under this guarantee.
4. The guarantee shall:
 - 4.1 remain in full force and effect from the date hereof, and shall expire upon the issue by the Engineer of the Performance Certificate in terms of the Contract;
 - 4.2 exist independently of the Contract or any amendment, variation or novation thereof;
 - 4.3 are returned to the Contractor on expiration in terms of Clause 4.1 above;
 - 4.4 not be ceded or assigned by TCTA, or otherwise dealt with in any manner whatsoever which has, or may have the effect of, transferring or encumbering or alienating TCTA’s rights hereunder; and
 - 4.5 be deemed to have been made in the Republic of South Africa and to be governed and construed by, and in accordance with, the laws of the Republic of South Africa to the

jurisdiction of whose Court the Bank irrevocably submits itself. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Employer to take proceedings against the Bank in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions against the Bank preclude the taking of proceedings against the Bank in any other jurisdiction whether concurrently or not.

SIGNED ON THIS DAY OF 20

AT

(Place)

.....

and

.....

(Signature 1)

(Signature 2)

AS WITNESSES:

1.

2.

Attachment: Resolution of Board of Directors (Certified Copy)

ANNEXURE C1.2-4: FORM OF ADVANCE PAYMENT GUARANTEE

To be provided to

The Chief Executive

TCTA

Tuinhof Building

Stinkhout Wing

265 West Street

CENTURION, 0157

South Africa

Whereas TCTA

has awarded **TENDER NO 054/2024/PMID/MCWAP2/RFB** (hereinafter called "the Contract")

to

(hereinafter called "the Contractor")

and we have been informed that..... (hereinafter called the "Principal") is your contractor in terms of the Contract and wishes to receive an advance payment, for which the Contract requires him to obtain a bank guarantee.

We, the undersigned

..... and

(Name 1)

(Name 2)

acting herein as

..... and

(Position 1)

(Position 2)

of

(hereinafter called "the Bank")

and being duly authorised to sign and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors of the Bank, a certified copy of which is annexed hereto, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that:

1. The Bank will:

1.1 pay without delay to the TCTA on its first written demand and without proof of any breach of contract by the Contractor other than the certificate specified in clause 1.2 below, amounts not exceeding in total :

R(.....

(figures)

(words)

..... RAND)

(hereinafter called "the Guaranteed Amount")

1.2 make such payment(s) to the TCTA upon receipt by the Bank of a certificate signed by TCTA certifying that the Contractor, in his opinion, as at the date of issue of such certificate has failed to repay part or all of the advance payment in accordance with its contractual obligations to the TCTA under the Contract;

1.3 make such payment(s) to the TCTA at an address designated by the TCTA for this purpose.

2. The demand for payment together with this guarantee shall constitute *prima facie* proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.

3. Neither the failure of the TCTA to enforce strict or substantial compliance by the Contractor with the obligations nor any act, conduct, or omission by the TCTA prejudicial to the interests of the Bank will discharge the Bank from liability under this Guarantee.

4. The Guarantee shall:

4.1 remain in full force and effect from the date hereof until the issue of a certificate signed by the Engineer appointed in terms of the Contract to the effect that the Contractor has duly and fully discharged the obligations as provided for in the Contract in respect of repayment to the TCTA of the Guaranteed Amount;

4.2 exist independently of the Contract or any amendment, variation or novation hereof;

4.3 not be ceded or assigned by the TCTA, or otherwise dealt with in any manner whatsoever which has or may have the effect of transferring or encumbering or alienating the TCTA's rights hereunder; and

4.4 be governed by the laws of the Republic of South Africa.

**ANNEXURE C1.2-5:
SECTION 37(2) UNDERTAKING IN TERMS OF THE
OCCUPATIONAL HEALTH AND SAFETY ACT, 1993**

This AGREEMENT made at on this the day
of in the year between

**TRANS-CALEDON TUNNEL AUTHORITY
(TCTA)**

of Tuinhof Building, Stinkhout Wing, 265 West Street, Centurion, 0157
(hereinafter called "the Employer")

of the one part, herein represented by in his
capacity as and delegate of the Employer in terms of the
Employer's standard powers of delegation pursuant to the provisions of Act No. 7 of 1998, and

[CONTRACTOR NAME]

a company existing and registered under the Laws of South Africa, having its registered office located at
[Contractor's physical address]; and
(hereinafter collectively called "the Mandatary")

of the other part, herein represented by in his
capacity as

WHEREAS the Employer wishes that certain Works be constructed in terms of:

TENDER NO 054/2024/PMID/MCWAP2/RFB

(hereinafter "the Contract"):

and has accepted a tender by the Mandatary for the construction, completion & remedying of
defects of such Works, and whereas the Employer and the Mandatary have agreed to certain
arrangements and procedures to be followed in order to ensure compliance by the Mandatary with
the provisions of the Occupational Health and Safety Act, 1993;

IT IS AGREED AS FOLLOWS:

- 1. The Mandatary shall execute the work in accordance with the contract documents
pertaining to this Contract.

-
2. This Agreement be of full force and effect from the Commencement Date (as defined in the Contract), to either:
 - (a) the date of issue of the Performance Certificate in terms of sub-clause 11.9 of the Conditions of Contract, or
 - (b) the date of termination of the Contract in terms of sub-clauses 15, 16 or 19 of the Conditions of Contract.
 3. The Mandatary warrants that it shall comply with:
 - (a) all the requirements, regulations and standards of the Occupational Health and Safety Act, 1993 (hereinafter referred to as "The Act") together with its amendments and with specific reference to:
 - i. Section 8: General duties of employers to their employees;
 - ii. Section 9: General duties of employers and self-employed persons to persons other than employees;
 - iii. Section 37: Acts or omissions by employees or mandataries; and
 - iv. Sub-section 37(2) relating to the purpose and meaning of this Agreement.
 - (b) the procedures and safety rules of the Employer which are applicable to the Mandatary and to all his subcontractors.
 4. In addition to the requirements of sub-clauses 4.8, 6.7 and 17.1 of the Conditions of Contract and all other relevant requirements of the Contract, the Mandatary agrees to execute all the works forming part of the Contract and to operate and utilise all machinery, plant and equipment in accordance with the Act.
 5. The Mandatary acknowledges and agrees that it is responsible for the compliance with the Act by all his subcontractors, whether or not nominated and/or approved by the Employer.
 6. The Mandatary warrants that it and its subcontractors' workmen are covered in terms of the Compensation for Occupational Injuries and Diseases Act, 1993, which cover shall remain in force whilst any such workmen are present on Site. A letter of good standing from the Compensation Commissioner to this effect must be produced to the Employer upon signature of this undertaking.
 7. The Mandatary undertakes to ensure that it and/or its subcontractors and/or their respective employees will at all times comply with the following conditions:
 - (a) the Mandatary shall assume the responsibility in terms of Section 16.1 of the Act. The Mandatary shall not delegate any duty in terms of Section 16.2 of the Act without the prior written approval of the Employer. If the Mandatary obtains such approval and delegates any duty in terms of Section 16.2, a copy of such written delegation shall immediately be forwarded to the Employer.
 - (b) all incidents referred to in the Act shall be reported by the Mandatary to the Department of Employment and Labour as well as to the Employer. The Employer will further be provided with copies of all written documentation relating to any incident.
-

- (c) The Employer hereby obtains an interest in the issue of any formal enquiry conducted in terms of Section 32 of the Act into any incident involving the Mandatary and/or his employees and/or its subcontractors.

In witness thereof the parties hereto have set their signatures hereon in the presence of the subscribing witnesses:

SIGNED FOR AND ON BEHALF OF EMPLOYER:

WITNESS:

NAME (IN CAPITALS)

SIGNED FOR AND ON BEHALF OF THE MANDATARY

WITNESS:

NAME (IN CAPITALS)

ANNEXURE C1.2-6: FORM OF DISPUTE ADJUDICATION AGREEMENT

[for each member of a three-person DAB]

Name and details of Contract **TENDER NO 054/2024/PMID/MCWAP2/RFB**

Name and address of Employer TCTA
Tuinhof Building
Stinkhout Wing
265 West Street
CENTURION, 0157
South Africa

Name and address of Contractor

Name and address of Member

Whereas the Employer and the Contractor have entered into the Contract and desire jointly to appoint the Member to act as one of the three persons who are jointly called the “DAB” [*and desire the Member to act as chairman of the DAB*][Delete if inapplicable].

The Employer, Contractor and Member jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the “General Conditions of Dispute Adjudication Agreement”, which is appended to the General Conditions of the “Conditions of Contract for Construction” First Edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.

2. (*Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any.*)

For example:

In the procedural rules annexed to the General Conditions of Dispute Adjudication Agreement, Rule is deleted and replaced by: “.....”

3. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member shall be paid as follows:

A retainer fee of per calendar month,

Plus a daily fee of per day.

- 4. In accordance of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to serve, as described in this Dispute Adjudication Agreement, as one of the three persons who are jointly to act as the DAB.
- 5. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.

This Dispute Adjudication Agreement shall be governed by the Laws of the Republic of South Africa.

SIGNED _____ SIGNED _____ SIGNED _____

.....

NAME	NAME	NAME
for and on behalf of the Employer in the presence of	for and on behalf of the Contractor in the presence of	for and on behalf of the Member in the presence of

Witness:	Witness:	Witness:
----------	----------	----------

.....

Name:	Name:	Name:
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.....

Address:	Address:	Address:
----------	----------	----------

.....

.....

Date:	Date:	Date:
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.....

ANNEXURE C1.2-7: AMENDMENT TO DAB PROCEDURAL RULES

Clause 5

Delete the second sentence and its sub-paragraphs and substitute:

“In the interest of expediency, unless otherwise agreed between the Employer and the Contractor (the Parties) and the DAB, the DAB shall direct the Parties to conform to the following programme:

- (a) the Response from the other Party to the Statement of Case is to be received by the Chairman of the DAB and the referring Party within 56 days of the date of receipt by the Chairman of the DAB of the Statement of Case;
- (b) thereafter the DAB may direct that further evidential submissions be made by the referring Party in replication to the Response. Such direction by the DAB and any further submissions are to be concluded within 21 days from the date of receipt by the Chairmen of the DAB of the Response;
- (c) a period of 35 days will then be allowed by the DAB to conduct any hearing (provisionally 7 days) that the DAB may deem to be necessary and for the DAB to make and give its decision (provisionally 28 days);
- (d) in the event that the DAB conducts a hearing on the dispute, it will decide on the date and place for the hearing and may request that further written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Subject to the procedural programme above and other relevant factors the DAB shall:

- (i) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other’s case, and
- (ii) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.”

Clause 6

Delete the text of this Clause and substitute “Not Used”.

Clause 9

In the second line of sub-paragraph (b) amend the words “who may require the minority Member” to read “who shall require the minority Member”.

Add the following new Clause:

“Clause 10

- (a) On its own initiative, the DAB may correct a clerical, computational or typographical error, or any errors of a similar nature, contained in a DAB decision, provided such correction is submitted to the Parties within 14 days of the date of such decision.

- (b) Any Party may apply to the DAB for the correction of an error of the kind referred to in subparagraph (a) of this Clause. Any such application must be made to the DAB within 14 days of the receipt of the DAB decision by such Party. After receipt of the application by the Chairman of the DAB the DAB shall grant the other Party a short (but reasonable) time limit from the receipt of the application by that Party, to submit any comments thereon. Any correction or interpretation of the DAB shall be issued within 14 days following the expiry of the time limit for the receipt of any comments from the other Party. However, the Parties may agree to extend the time limit for the issuance of any correction or interpretation.
- (c) Should the DAB issue a correction or interpretation of the DAB decision, all time limits associated with the DAB decision shall recommence to run upon receipt by the Parties of the correction or interpretation of the decision.”