



NQUTHU MUNICIPALITY
DEPARTMENT OF TECHNICAL SERVICES
ELETRICITY
BID INVITATION
FOR
PANEL OF SERVICE PROVIDERS FOR EMERGENCY ELECTRICAL
BREAKDOWN NQULM36/2023-2024

DELIVERY PERIOD

36 Months as and when required

CIDB GRADING

2EB or 2EP and Higher

EMPLOYER :

Municipal Manager

Nquthu Municipality
Private Bag x 5521
Nquthu
3135

SCM

Contact Person : Ms S. Zulu
Tell No : 034 271 6100

Technical Services

Contact Person: Mr M Nkala
Tell No : 034 271 6100

NAME OF TENDERER.....



MBD

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NQUTHU LOCAL MUNICIPALITY

TENDER NUMBER: NQULM36/2023-2024

CLOSING DATE: 02 MAY 2024

DESCRIPTION: PANEL OF SERVICE PROVIDERS FOR EMERGENCY ELECTRICAL BREAKDOWN FOR A PERIOD OF THREE (3) YEARS

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).

BID DOCUMENTS MAY BE POSTED TO:

**PRIVATE BAG 5521
NQUTHU
3135**

OR

DEPOSITED IN THE BID BOX SITUATED AT:

**83 MDLALOSE STREET
NQUTHU
3135**

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open Mondays to Thursdays (7h30 to 16h00) and Fridays (07h30 to 12h30).

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in the Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)

**THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER.....

POSTAL ADDRESS.....

STREET ADDRESS.....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER.....

FACSIMILE NUMBER CODENUMBER.....

VAT REGISTRATION NUMBER

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? YES/NO

ARE YOU THE ACCREDITED REPRESENTATIVE

IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU? YES/NO
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

DATE.....

CAPACITY UNDER WHICH THIS BID IS SIGNED.....

TOTAL BID PRICE.....

T1.1.1
ADVERTISED TENDER NOTICE



PANEL OF SERVICE PROVIDERS FOR EMERGENCY ELECTRICAL BREAKDOWN FOR A PERIOD OF THREE (3) YEARS

Nquthu Local Municipality is calling for proposals from suitably qualified and accredited professional service providers to render services to the Municipality of Emergency Electrical breakdown for a period of three (3) years

1. Tender No. : NQULM36/2023-2024

Tender documents will be obtainable from Nquthu Municipality, Cashiers Offices as from Tuesday, 02 April 2024 upon payment of non-refundable amount of **R157.00** per document. No cheques will be accepted.

There will be NO compulsory clarification meeting.

Only organisations / consortia with proven track record that can demonstrate success in similar projects will be considered.

Tender documents should be submitted in a sealed envelope marked with "**Tender Number, and the Closing Date**" and should be deposited in the tender box situated at Nquthu Municipality Offices situated at 83/1-8 Mdlalose Street, Nquthu, 3135 not later than 12h00 on Thursday, 02 May 2024, where tenders will be publicly opened after closing.

No late submissions will be considered and no tenders or proposals sent or submitted by telefacsimile, telegram or electronic mails will be accepted.

The municipality is not obliged to accept the lowest or any tender. Tenders will be adjudicated in terms of the Council's Supply Chain Management Policy on the 80/20 Preferential Point System, it is therefore essential that the official tender document must be used.

All tender enquiries must be directed to Mr. M Nkala during office hours on (034) 271 6100 ext. 6161, other queries must be directed to SCM office during office hours on (034) 271 6100 ext. 6125.

MB JIYANE

MUNICIPAL MANAGER

THE TENDER

PART T1
TENDERING PROCEDURE

Preamble

The conditions of tender are the Standard Conditions of Tender as contained in Annex F of SANS 294-2004, Edition 1.

The Standard Conditions of Tender makes several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender. Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies.

F.1.1 THE EMPLOYER

Employer : Nquthu Local Municipality
Contact Person : Mr Mthobisi Nkala
Tel No : 034 271 6100
Fax : 034 271 6111
Email : directortech@nquthu.gov.za

F.1.2 TENDER DOCUMENTS

The Tender Document issued by the employer comprises:

(a) The Tender Document:

THE TENDER

Part T1: Tendering Procedures

T1.1: Tender Notice and Invitation to Tender
T1.2: Tender Data

Part T2: Returnable Documents

T2.1: List of Returnable Documents
T2.2: Returnable Schedules

THE CONTRACT

Part C1: Agreements and Contract Data

C1.1: Form of Offer and Acceptance
C1.2: Contract Data
C1.3: Form of Guarantee

Part C2: Pricing Data

C2.1: Pricing Instructions
C2.2: Pricing Schedule

Part C3: Scope of Work

C3: Scope of Work

Part C5: Annexure

C5: Annexure

(b) **"General Conditions of Contract - 2 editions September 2005, CIDB Document 1015"**

This document is issued by the Construction Industry Development Board (CIDB).

The Tender Document shall be obtained from the Employer at the physical address stated in the Tender Notice, upon payment of the deposit stated in the Tender Notice.

F.2.1 ELIGIBILITY

Only those tenderers who have at least one member, director or partner registered with the Council for the Built Environment of South Africa, have NQF 5 and 7 qualifications will be eligible to tender.

Joint ventures are eligible to submit tenders provided that:

1. On award of the tender, the joint venture will be required to register the JV as a legal entity. Failure to register the JV as a legal entity will immediately invalidate the award.

F.2.7 CLARIFICATION MEETING AND SITE INSPECTION

There will be NO compulsory clarification meeting.

F.2.13 SUBMITTING A TENDER OFFER

F.2.13.3 Tender offers shall be submitted as an original only.

F.2.13.5 Delivery of Tender

The Employer's address for delivery of tender offers and identification details to be shown on each tender offer packages are:

Location of tender box	:	Nquthu Municipality, Main Reception
Physical address	:	83 Mdlalose Street
Identification details	:	Tender No.: NQULM36/2023-2024

F.2.13.6 A two-envelope procedure will not be followed.

& F.3.5

F.2.15 CLOSING TIME

The closing time for submission of tender offers is:

Time	:	12h00
Date	:	02 May 2024
Day	:	Thursday

F.2.16 TENDER OFFER VALIDITY

The tender offer validity period is 90 days from the closing date for submission of tenders.

F.2.23 CERTIFICATES

The tenderer is required to submit the following with their tender:

- Company registration certificate
- Proposed team organogram
- Original Valid Tax Clearance Certificate
- Certified ID Copies of members (dated not older than 03 months)
- Joint Venture Agreement in case of Joint Ventures
- Workmen's Compensation Registration Certificate (or proof of payment of contributions in terms of the Compensation for Occupational Injuries and Diseases Act No. 130 on 1993) if applicable
- Proof of payment for municipal services (rates or rentals) or Proof of residential address letter for BIDDERS not receiving municipal services (directors and company)
- Proof of registration on the CSD
- MBDs (3, 4, 5, 6.1, 7.1,8 and 9)

F.3.4 OPENING OF TENDER SUBMISSIONS

Tenders will be opened publicly immediately after the closing time at 83 Mdlalose Street, Nquthu, Nquthu Municipality offices.

F.3.11 EVALUATION OF TENDER OFFER

The procedure for the evaluation of responsive tenders will be as follows:

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- The 80/20 system for requirements with a Rand value of up to R 50 000.00 000 (all applicable taxes included); and

1.2 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) Specific goals.

1.3.1 The maximum points for this bid are allocated as follows:

	POINTS
1.3.1.1 PRICE
1.3.1.2 specific goals
Total points for Price and specific goals must not exceed	100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

2.1 "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

- 2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **"EME"** means any enterprise with annual total revenue of R5 million or less.
- 2.10 **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **"non-firm prices"** means all prices other than "firm" prices;
- 2.13 **"person"** includes a juristic person;
- 2.14 **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- Ps = Points scored for comparative price of bid under consideration
- Pt = Comparative price of bid under consideration
- Pmin = Comparative price of lowest acceptable bid

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA’s approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-

contract.

- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7 SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

7.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted?%
- (ii) the name of the sub-contractor?
- (iii) the B-BBEE status level of the sub-contractor?
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

8 DECLARATION WITH REGARD TO COMPANY/FIRM

- 8.1 Name of firm :
- 8.2 VAT registration number :
- 8.3 Company registration number

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....
.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
 - Supplier
 - Professional service provider
 - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

Municipality where business is situated
Registered Account Number
Stand Number

8.8 TOTAL NUMBER OF YEARS THE COMPANY/FIRM HAS BEEN IN BUSINESS?
.....

8.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct;
- (ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution

.....
SIGNATURE (S) OF BIDDER (S)

WITNESSES:

1. 2.

DATE:

ADDRESS:

.....
.....

b. Functionality

Key aspect of criterion	Evaluation criterion	Remarks	Points	Awarded points
List of key personnel, their experiences (include CV detailing project – specific work experience for each employee) and academic qualifications. NQF LEVEL -5 (in relation to electricity)	3 + years' experience	Good	15	
	2 – 3 years' experience	Fair	10	
	0 – 2 years of experience	Poor	5	
Light Delivery Vehicle (LDV), Truck mounted cherry picker, Truck mounted crane – proof of ownership or rental to be submitted	All three vehicles	Good	15	
	Two vehicles	Fair	10	
	One vehicle	Poor	5	
Qualifications and training (5 point per qualification)	Electrical Trade Test Certificate	Good	5	
	Electrical Certificate of Compliance	Good	5	
	Transformer Testing Certificate	Good	5	
Erection Method statements for the followings (5 point per Method)	Stringing and Termination of Conductors	Good	5	
	Stringing and termination of earth-wire	Good	5	
	Cable installation	Good	5	
	Earthing	Good	5	
	Pre- commissioning of all major plant must be in accordance with specification	Good	5	
Traceable project experience	Provided Two traceable projects of similar nature in the past 5 years (Attach letters of appointments)	Good	10	
	Provided one traceable projects of similar nature in the past 5 years. (Attach letters of appointments)	Fair	5	
	Provided no traceable similar projects	Poor	0	

Note: Service Provider that scores less than 70% on functionality will be eliminated.

DEFINITIONS

- PI Insurance: The professional Indemnity Insurance carried by professional services provider (PSP) with an amount of R2 000 000.00 as a minimum. The insurance must remain valid until all contractual matters are completed or until tenderer is removed from database. The tenderer shall provide proof by way of schedule or a letter from the insurers or brokers certifying that the tenderer is covered.
- Tax Clearance Certificate: The Tax Clearance Certificate (TCC) or Pin as obtained from the South African Receiver of Revenue (SARS) must be kept valid until all contractual matters are completed.
- NQF 7: The national qualifications framework certificate or confirmation issued by either CETA or the training institution in recognition of an individual's competency on design and tender documentation of labour intensive projects. A certified copy will be acceptable for the purposes of this tender.
- NQF 5: The national qualifications framework certificate or confirmation issued by either CETA or the training institution in recognition of an individual's competency on management of labour intensive projects. A certified copy will be acceptable for the purposes of this tender.
- Company Registration: A certified copy of the company registration showing the names of the directors/members and the number of shares owned by directors. In the event of a CC, it will be the interest of a member.

d. Conditions associated with the granting of points

The tenderer must submit, as a minimum, certified copies of certificates and registrations. Only the company profile and PI insurance proof will not need to be certified. However, the employer reserves the right to verify the validity of the PI insurance. Consequently, the contact details of the insurers (or brokers) in the case of PI, should be provided.

* **Only refers to company owners/directors/members. No documents belonging to employees will be accepted for point's allocation.**

** Attach proof from a registered accountant/tax consultant to claim points associated with this category. Refer to small business Act.

The contract will be awarded to the tenderer who scores the most points in this stage. In the event of a tie, the tenderer who scores the most points on Items 3, 4, 5 and 7 will be awarded the contract.

F.3.13 ACCEPTANCE OF TENDER OFFER

F.3.13.1 Tender offers will only be accepted on condition that:

- (a) The tender offer is signed by a person authorised to sign on behalf of the Tenderer;

- (b) A valid original Tax Clearance Certificate, or a photocopy of the original certificate, certified by a commissioner of oaths, is included with his/her tender;
- (c) A Tenderer who submitted a tender as a Joint Venture has included an acceptable Joint Venture Agreement with his tender;
- (d) The Tenderer or a competent authorised representative of the Contractor who submitted the tender has attended the compulsory clarification meeting or site inspection if applicable;
- (e) The Tenderer or any of its directors is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
- (f) The tenderer has not:
 - i) Abused the Employer's Supply Chain Management System; or
 - ii) Failed to perform on any previous contract and has been given written notice to this effect; and
- (g) has completed the Compulsory Enterprises Questionnaire and there are no conflicts of interest which may impact on the Tenderer's ability to perform the contract in the best interest of the Employer or potentially compromises the tender process.
- (h) Certified company registration documents.
- (i) Certified proof of professional indemnity is attached.

F.3.18 COPIES OF CONTRACT

The employer will provide the successful Tenderer with ONE paper copy of the signed contract.

SPECIAL CONDITIONS OF CONTRACT

On executing the scope of work, the following will be applicable

1. DURATION OF CONTRACT

The contract is envisaged to subsist for a period of three (3) years from the date of confirmation of appointment of the service provider. The will then be reviewed annually and may be cancelled at any stage based on the performance of the service provider.

2. PAYMENTS

All payments will be made to the contractor within thirty (30) days of receipt of an invoice and all invoices should be submitted by the 10th of each Month.

3. SERVICE LEVEL AGREEMENT

- 3.1 A service level agreement will be entered into with the successful bidder.
- 3.2 Negotiations in respect of the service level agreement must be finalised within fourteen (14) calendar days of receipt of the letter of acceptance by the successful bidder.
- 3.3 Service level agreement entered into with the successful bidder will capture the time frames or performance applying to this contract.
- 3.4 Should no consensus be reached within fourteen (14) days of finalising the service level agreement (SLA), the Municipality will be entitled to:

- (i) Cancel its acceptance of the bid or
- (ii) Extend the negotiation period without prejudice to any of its other rights in terms of this contract or common law.

4. BID VALIDITY

This bid shall not be withdrawn during a period of one hundred and twenty (120) days from the date on which it is to be lodged and it may be accepted at any time during that period.

5. BID COMPLIANCE

The bid must comply with the following:

- This bid or part thereof may be ceded, however the main bidder shall take full responsibility and remain liable for the works.

6. MEETINGS

Progress meetings will be held as and when required with the successful bidders.

7. RETURNABLE DOCUMENTS

The issued documents must be returned in the form and order in which they were issued to assist the Municipality to expedite adjudication of the bids.

8. OTHER MATTERS

Bidders must certify that he/she have no outstanding debts due to the Municipality where the bidder originates and any other Municipality or any service provider.

PART 2
RETURNABLE DOCUMENTS

T2.1
LIST OF RETURNABLE DOCUMENTS

T2.1.1 Returnable schedule required for tender evaluation purposes only

T2.1.1.1 Certificate of tenderers attending clarification meeting – N/A

T2.1.1.2 Schedule of previous similar works

T2.1.1.3 Compulsory enterprise questionnaire

T2.1.1.4 Record of addenda to tender documents

T2.1.2 other returnable schedules required for tender evaluation purposes

T2.1.2.1 Certificate of authority for signature

T2.1.2.3 Surety and bank details

T2.1.2.4 Items as per Clause F.2.23 of the Tender Data

T2.1.2.5 Resolution of the Board of Directors (or members) to enter into consortia or joint ventures

T.2.1.2.6 JV Disclosure form

T2.2
RETURNABLE SCHEDULES

T2.2.1
RETURNABLE SCHEDULES REQUIRED FOR
TENDER EVALUATION PURPOSES ONLY

SCHEDULE OF PREVIOUS SIMILAR WORKS

Tenderers must furnish hereunder details of similar works which they have satisfactorily completed in the past. (Attach Appointment Letters of relevant work)

EMPLOYER	NATURE OF WORK	VALUE OF WORK	DURATION AND COMPLETION DATE	EMPLOYER CONTACT NO.

Date:.....

Signature of Tenderer:.....

COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1. Name of enterprise: _____

Section 2. VAT registration number, if any: _____

Section 3. Company registration number, if any: _____

Section 4. Particulars of sole proprietors and partners in partnerships.

Name*	Identity number*	Personal income tax number*

* Complete only if sole proprietor or partnership and attach separate page if more than three partners.

Section 5. Particulars of companies and close corporations

Company registration number: _____

Close corporation number: _____

Tax reference number: _____

Section 6. Record in the service of the state

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- a member of any municipal council
- a member of any provincial legislature
- a member of the National Assembly or the National Council of Provinces
- a member of the board of directors of any municipal entity
- an official of any municipality or municipal entity an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999)
- a member of an accounting authority of any national or provincial public entity
- an employee of Parliament or a provincial legislature

If any of the above boxes are marked, disclose the following*:

Name of sole proprietor, partner, director, manager, principal shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

* Insert separate page if necessary.

Section 7. Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

* Insert separate page if necessary.

The undersigned, which warrants that he/she is dully authorised to do so on behalf of the enterprise:

- i. authorises the Employer to obtain a tax clearance certificate from the South African Revenue Services that my/our tax matters are in order;
- ii. confirms that neither the name of the enterprise or the name of any partner, manager, director or other persons, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- iii. confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise, has within the last five years been convicted of fraud or corruption;
- iv. confirms that I/we am/are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- v. confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed: _____

Date: _____

Name: _____

Position: _____

Enterprise name: _____

RECORD OF ADDENDA TO TENDER DOCUMENTS

	Dated	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed:

Date:

Name:

Position:

Tenderer:

CERTIFICATE OF AUTHORITY FOR SIGNATURE

Signatory for companies shall confirm their authority thereto by attaching a duly signed and dated copy of the relevant resolution of the board of directors to this form.

An example is given below.

Mr/Ms/Mrs/Miss..... whose signature appears below, has been duly authorized to sign

all documents in connection with the Tender for Contract No.:

.....

and any contract that may arise there from on behalf of (name of Tenderer in block letters)

.....

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER CAPACITY

AS:.....

DATE:

SIGNATURE OF AUTHORISED

SIGNATORY:.....

WITNESS: 1.....

 2.....

SCHEDULE OF ITEMS AS PER CLAUSE F.2.23 OF THE TENDER DATA

The Tenderer should insert all necessary and appropriate documents after having had a reference to Clause F.2.23 of the Tender Data. The schedule of documents should be inserted in the order of presentation in the referenced clause.

RESOLUTION OF BOARD OF DIRECTORS TO ENTER INTO CONSORTIA OR JOINT VENTURES

Resolution of a meeting of the Board of Directors/Members/Partners* of:

(Legally correct full name and registration number, if applicable, of the Enterprise)

Held at _____
(place)

on _____
(date)

Resolved that:

- 1. The Enterprise submit a Bid/Tender, in consortia/joint venture with the following enterprise:

(List all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the consortia/joint venture)

to the Employer and for the work explained in the Scope of Work.

Tender No.: _____ (Tender Number as per Tender Document)

- 2. Mr/Mrs/Miss/Ms*:

in his/her* capacity as: _____ (position in the Enterprise)

and who will sign as follows:

be, and is hereby, authorised to sign a consortium/joint venture agreement with the parties listed under item 1 above, and any and all other documents and/or correspondence in connection with and relating to the consortium/joint venture, in respect of the project described under Item 1 above.

3. The Enterprise accepts joint and several liability with the parties listed under item 1 above for the due fulfilment of the obligations of the joint venture/consortium deriving from, and in any way connected with, the Contract to be entered into with the Employer in respect of the project described under Item 1 above.

The Enterprise chooses as its domicilium citandi et executandi for all purposes arising from this joint venture/consortium agreement and the Contract with the Employer in respect of the project under Item 1 above:

Physical address: _____

 _____ (code)

Postal address: _____

 _____ (code)

Telephone: _____ (with code)

Fax: _____ (with code)

Email: _____

	Name	Capacity	Signature
1			
2			
3			
4			
5			

- Note:
1. * Delete which is not applicable
 2. This resolution must be signed by all the Directors/Members/Partners of the Bidding Enterprise.
 3. Should the number of Directors/Members/Partners exceed the space available above, additional names and signatures must be added on a separate page.

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state*.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.

3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name:

3.2 Identity Number:

3.3 Company Registration Number:

3.4 Tax Reference Number:

3.5 VAT Registration Number:

3.6 Are you presently in the service of the state* **YES / NO**

3.6.1 If so, furnish particulars.

.....
.....

3.7 Have you been in the service of the state for the past **YES / NO**

* MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

Twelve months?

3.7.1 If so, furnish particulars.

.....
.....

YES / NO

3.8 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?

3.8.1 If so, furnish particulars.

.....
.....

YES / NO

3.9.1 Are you, aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?

3.9.1 If so, furnish particulars

.....
.....

YES / NO

3.10 Are any of the company's directors, managers, principal shareholders or stakeholders in service of the state?

3.10.1 If so, furnish particulars.

.....
.....

YES / NO

3.11.1 Are any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in service of the state?

3.11.1 If so, furnish particulars.

.....
.....

CERTIFICATION

I, THE UNDERSIGNED (NAME)

**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS
CORRECT.**

**I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION
PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

T2.1.3
RETURNABLE SCHEDULE TO BE
INCORPORATED INTO THE CONTRACT

MBD 6.1

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 **To be completed by the organ of state**

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.

- b) The applicable preference point system for this tender is the 80/20 preference point system.

- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	

- 1.1 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.2 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- i) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- ii) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- iii) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- iv) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- v) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

(a) POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right) \text{ or } Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

- Ps = Points scored for price of tender under consideration
 Pt = Price of tender under consideration
 Pmin = Price of lowest acceptable tender

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)

DECLARATION WITH REGARD TO COMPANY/FIRM

1.1 Name of company/firm.....

1.2 Company registration number:

1.3 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
 - One-person business/sole propriety
 - Close corporation
 - Public Company
 - Personal Liability Company
 - (Pty) Limited
 - Non-Profit Company
 - State Owned Company
- [TICK APPLICABLE BOX]

(a) I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

1. The information furnished is true and correct;
2. The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
3. In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
4. If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - disqualify the person from the tendering process;
 - recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - forward the matter for criminal prosecution, if deemed necessary.

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website (www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME):
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION
FORM TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf

of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

I, _____, being first dully sworn, depose

and says that he or she is _____ of _____
(state position in company) *(Bidder)*

the party making the foregoing bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation;
that the bid is genuine and not collusive or sham;

	that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding;
	that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other

C1.1
FORM OF OFFER AND ACCEPTANCE

**Form of Offer and Acceptance
(Agreement)**

Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following works:

.....

The Tenderer, identified in the Offer signature block below, has examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the Tenderer, deemed to be duly authorized, signing this part of this Form of Offer and Acceptance, the Tenderer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

.....

.....Rand (in words); R.....(in figures).

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Tenderer before the end of the period of validity stated in the Tender Data, whereupon the Tenderer becomes the party named as the Contractor in the Conditions of Contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

for the Tenderer.....

.....

(Name and address of organization)

Name & signature of witness

Name: **Signature**.....

Date:

Acceptance

By signing this part of this Form of Offer and Acceptance, the employer identified below accepts the Tenderer’s Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the Tenderer’s Offer shall form an agreement between the Employer and the Tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the contract, are contained in

Part 1 Agreements and Contract Data, (which includes this Agreement)

Part 2 Pricing Data

Part 3 Scope of Work

Part 5 Annexure

and documents or parts thereof, which may be incorporated by reference into Parts 1 to 3 and 5 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representative(s) of both parties.

The Tenderer shall within two weeks after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer’s agent (whose details are given in the Contract Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data at, or just after, the date this Agreement comes into effect. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

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

Signature(s)

Name(s)

Capacity

for the Tenderer

.....
(Name and address of organization)

Name & signature of witness

.....

.....

Date.....

Schedule of Deviations

Notes:

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

1 Subject:

Details:

2 Subject:

Details:

3 Subject:

Details:

4 Subject:

Details:

5 Subject:

Details:

6 Subject:

Details:

7 Subject:

Details:

8 Subject:

Details:

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

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

FOR THE TENDERER:

Signature(s) _____

Name(s) _____

Capacity _____

(Name and address of organization)

Name & signature of witness _____ **Signature** _____

FOR THE EMPLOYER

Signature(s) _____

Name(s) _____

Capacity _____

(Name and address of organization)

Name & signature of witness: _____ **Signature** _____

C1.2
CONTRACT DATA

PART 1: DATA PROVIDED BY THE EMPLOYER

The General Condition of Contract (CIDB September 2005), published by the Construction Industry Development Board, is applicable to this Contract.

The following contract specific data are applicable to this Contract.

GCC Clause	Information								
	The Name of the Employer is Nquthu Local Municipality								
3.4 and 4.3.2	<p>The authorized and designated representative of the Employer is: Name: Mr MB Jiyane</p> <p>The address for receipt of communication is:</p> <table border="0"> <tr> <td><u>Physical</u></td> <td><u>Postal</u></td> </tr> <tr> <td>Nquthu Municipality</td> <td>Private Bag 5521</td> </tr> <tr> <td>83 Mdlalose Street, Nquthu</td> <td>Nquthu</td> </tr> <tr> <td>3135</td> <td>3135</td> </tr> </table> <p>Telephone: (034) 271 6100 Fax: (034) 271 6111 E-mail: mm@nquthu.gov.za</p>	<u>Physical</u>	<u>Postal</u>	Nquthu Municipality	Private Bag 5521	83 Mdlalose Street, Nquthu	Nquthu	3135	3135
<u>Physical</u>	<u>Postal</u>								
Nquthu Municipality	Private Bag 5521								
83 Mdlalose Street, Nquthu	Nquthu								
3135	3135								
1	The Panel of service provider for Emergency Electrical Breakdown for a period of three (3) years.								
3.4.1	Communication by email is not permitted.								
3.6	The Service Provider may not release public or media statements or publish material related to the Services or Project under any circumstances.								
3.14	The program shall be submitted within 14 Days of the award of the Contract.								
5.4.1	The Service Provider is required to provide professional indemnity insurance cover. The professional indemnity insurance shall be a minimum of R2 000 000.00 (Two million rand)								
5.5	<p>The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following:</p> <ol style="list-style-type: none"> 1. Exceeding the approved budget 2. Engaging specialists service providers 								
8.1	The Service Provider is to commence the performance of the Services within 14 Days of the date that the Contract becomes effective.								
8.2.1	The Contract is concluded when the defects liability period ends.								
8.4.3(c)	The period of suspension under Clause 8.5 is not to exceed two months.								

9.1	Copyright of documents prepared for the Project shall be vested with the Service Provider.
12.1	Interim settlement of disputes is to be by mediation without legal representation.
12.2/12.3	Final settlement is by arbitration.

PART 2: DATA PROVIDED BY THE SERVICE PROVIDER

1	The name of the Service Provider is.....								
1	<p>The address of the Contractor is:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><u>Physical</u></td> <td style="width: 50%; border: none;"><u>Postal</u></td> </tr> <tr> <td style="border: none;">.....</td> <td style="border: none;">.....</td> </tr> <tr> <td style="border: none;">.....</td> <td style="border: none;">.....</td> </tr> <tr> <td style="border: none;">.....</td> <td style="border: none;">.....</td> </tr> </table> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>	<u>Physical</u>	<u>Postal</u>
<u>Physical</u>	<u>Postal</u>								
.....								
.....								
.....								
5.3	<p>The authorized and designated representative of the Service Provider is: Name:</p> <p>The address for receipt of communication is: Telephone:</p> <p>Facsimile:</p> <p>Address:</p> <p>.....</p>								

**PART C2
PRICING DATA**

**C2.2
PRICING SCHEDULE**

**C2.1
PRICING INSTRUCTIONS**

C2.2 PRICING INSTRUCTIONS

C2.1 BILL OF QUANTITY

Item	Supply Delivery, installation and commissioning of material	UNIT	QTY	Supply and delivery - all material to complete task	Installation & Commissioning - to complete task	Amount
1	MV Joints 11 KV -XLPE underground cables					
1,1	70 mm ² XLPE	No	1	R	R	R
1,2	95 mm ² XLPE	No	1	R	R	R
1.3	Cable fault tracing 11 KV	Hour	1	R	R	R
2	HT Terminations 11kv - indoor (similar to Raychem - including lugs. Bolts & nuts etc.)					
2.1	50 - 70 mm ² XLPE	No	1	R	R	R
3	LT Joints (including ferrules etc.)					
3.1	35mm ² x 4 CSWA	No	1	R	R	R
3.2	70mm ² x 4 CSWA	No	1	R	R	R
4	LT Terminations (including Gland. Shroud. Lugs, bolts & nuts etc.)					
4.1	35mm ² x 4 CSWA	No	1	R	R	R
4.2	70mm ² x 4 CSWA	No	1	R	R	R
5	Mini Substations					
5.1	Mini Sub/RMU	No	1	R	R	R
5.2	Repair Mini-sub 315 KVA	No	1	R	R	R
5.3	Repair Mini-sub 500 KVA	No	1	R	R	R
5.4	Replace Mini-sub 315 KVA	No	1	R	R	R
5.5	Replace Mini-sub 500 KVA	No	1	R	R	R

6	Substation					
6.1	Repair transformer 22 KV > 11 KV	No	1	R	R	R
6.2	Repair switch gears 11 KV	No	1	R	R	R
6.3	Repair control panel	No	1	R	R	R
6.4	Replace battery charger	No	1	R	R	R
6.5	Replace local transformer 11 KV	No	1	R	R	R
7	Connections - Meters					
7.1	Replace Three phase Consumption meter	No	1	R	R	R
7.2	Replace Three phase Demand meter	No	1	R	R	R
8	Overhead Lines 11 KV Spec (Replace)					
8.1	11 KV, Overhead intermitted pole complete	No	1	R	R	R
8.2	11 KV, Overhead tension pole complete			R	R	R
8.3	11 KV, Overhead anchor with transformer and cable	No	1	R	R	R
8.4	11 KV, Overhead turn pole complete	No	1	R	R	R
8.5	11 KV, Surge arrestor complete	No	1	R	R	R
8.6	11 KV, Pole insulator	No	1	R	R	R
8.7	11 KV, Strain insulator	No	1	R	R	R
8.9	Fuse link complete 11 KV	No	1	R	R	R
8.10	Conductor - Fox	m	1	R	R	R
8.11	Conductor - Squirrel	m	1	R	R	R
8.12	Conductor - Hare	m	1	R	R	R
8.13	replace pole transformer	No	1	R	R	R
9	Trenching					
9.1	800 - 1000 mm Normal	m	1	R	R	R
9.2	1200 - 1500 mm Normal	m	1	R	R	R
9.3	800 - 1000 mm use of jack hammer	m	1	R	R	R
9.4	1200 - 1500 mm use of jack hammer	m	1	R	R	R
9.5	Remove paving	m ²	1	R	R	R

9.6	Replace paving	m ²	1	R	R	R
9.7	Remove concrete	m ³	1	R	R	R
9.8	Replace concrete	m ³	1	R	R	R
9.9	Road crossing 1200 m, c/w 4 x 160 mm sleeves. Backfill compaction and repair of road surface	m	1	R	R	R
9.10	Drive way crossing 1200 m, c/w 4 x 160 mm sleeve. Backfill compaction and repair of road surface	m	1	R	R	R
				R	R	R
10	Vegetation Control (trees)			R	R	R
				R	R	R
10.1	Fell trees up to 200 mm Ø apply herbicide	No	1	R	R	R
10.2	Fell trees larger than 200 mm Ø apply herbicide	No	1	R	R	R
11	Testing					
11.1	MV Underground 11 KV - Fault location per cable	No	1	R	R	R
11.2	Transformer test	No	1	R	R	R
11.3	HT Cable - VLF per cable	No	1	R	R	R
11.4	HT Cable - pressure test per cable	No	1	R	R	R
11.5	HT Cable - fault location per cable	No	1	R	R	R
11.6	LT cable - fault location per cable	No	1	R	R	R
11.7	Transformer Test - exclude substations	No	1	R	R	R
11.8	HT Over Line (11 KV) Fault location per line	No	1	R	R	R
11.9	HT Over Line (400KV bulk) Fault location per line	No	1	R	R	R
12	Labour					
12.1	Artisan	Hour	1	N/A	R	R
12.2	Assistant Artisan	Hour	1	N/A	R	R
12.3	labourer	Hour	1	N/A	R	R
13	Transport					
13.1	LDV	km	1	N/A	R	R

13.2	8 ton Truck with crane	Hour	1	N/A	R	R
13.3	Personnel lifting platform (cherry picker)	Hour	1	N/A	R	R
Sub Total						R
VAT						R
Total						R

NB: it may be not feasible to include every item on the BOQ and as such should material on the BOQ be required, then the Municipality will request from the successful bidder written quotation to supply such services.

Estimated price escalation in percentage : % after year-1
:% after year-2

Signature by Tenderer: Date:.....

Amount in words:.....

Signature:.....

C3
SCOPE OF WORK

C3.1 DESCRIPTION OF THE WORKS

C3.1.1 Employer's Objectives

Nquthu Local Municipality intends to provide service delivery in ward-9 using its own funds. It is also the Employer's objective to train and employ as many local people as possible in order to reduce unemployment, poverty alleviation and starvation as well increasing the skills development in the Community.

C3.1.2 Overview of the Works

The works involve the emergency electrical breakdown and repair of all fault and completion of all normal electrical engineering services.

The projects will be located in ward-9 and shall attend to both emergency electrical breakdown, repair and fault occurring within Nquthu town boundary. However, the service provider will be expected to advise the municipality with any other issues which he/she deems necessary to note.

C3.1.3 Extent of the Works

C3.1.3.1 Scope of Works

The successful service provider will be required to:

1. MV cable joints – 95 mm XLPE
2. Transformers 2 x 22 – 11 KV
3. Main Sub switch gears and control panel
4. Mini – sub 11kv – 400 KV should they pack up
5. Replacing of wooden HT poles (T2 – 9mm, 140-160 creo poles)

ANNEXURE
STANDARD CONDITIONS OF TENDER
(as per Annex F of SANS 294: 2004, Edition 1)

F.1 GENERAL

F.1.1 ACTIONS

The employer and each tenderer submitting a tender offer shall comply with the conditions of tender. In their dealings with each other, they shall discharge their duties and obligations, as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently.

F.1.2 TENDER DOCUMENTS

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

F.1.3 INTERPRETATION

F.1.3.1 The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of the conditions of tender.

F.1.3.2 The conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

F.1.4 COMMUNICATION AND EMPLOYER'S AGENT

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be read, copied and recorded. Writing shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

F.1.5 The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tender for such cancellation and rejection, but shall give reasons for such action.

F.1.5.2 After the cancellation of a tender process or the rejection of all tender offers, the employer may abandon the proposed procurement and re-issue a similar tender notice and invitation to tender not less than six months after the closing date for tender offers or have it performed in another manner at any time.

F.2 TENDERER'S OBLIGATION

F.2.1 ELIGIBILITY

Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and if

the tenderer, or any of his principals, is not under any restriction to do business with the employer.

F.2.2 COST OF TENDERING

Accept that the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer comply with requirements.

F.2.3 CHECK DOCUMENTS

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

F.2.4 CONFIDENTIALITY AND COPYRIGHT OF DOCUMENTS

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

F.2.5 REFERENCE DOCUMENTS

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

F.2.6 ACKNOWLEDGE ADDENDA

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

F.2.7 SITE VISIT AND CLARIFICATION MEETING

Not applicable

F.2.8 SEEK CLARIFICATION

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

F.2.9 INSURANCE

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

F.2.10 PRICING THE TENDER OFFER

F.2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except value-added tax (VAT)), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

F.2.10.2 Show VAT payable by the employer separately as an addition to the tendered total of the prices.

F.2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

F.2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

F.2.11 ALTERATION TO DOCUMENTS

Do not make any alterations or additions to the tender documents, except to comply with the instructions issued by the employer, or alterations or additions necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

F.2.12 ALTERNATIVE TENDER OFFERS

F.2.12.1 Submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted. The alternative tender offer is to be submitted with the main tender offer together with a schedule that compares the requirements of the tender documents with the alternative requirements the tenderer proposes.

F.2.12.2 Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

F.2.13 SUBMITTING A TENDER OFFER

F.2.13.1 Submit a tender offer to provide the whole of the works, services or supply identified in the contract data, unless stated otherwise in the tender data.

F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or writing in black ink.

F.2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

F.2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorised signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

F.2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tender's name and contact address.

F.2.13.6 Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tender's name and contact address.

F.2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

F.2.13.8 Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

F.2.14 INFORMATION AND DATA TO BE COMPLETED IN ALL RESPECTS

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as being non-responsive.

F.2.15 CLOSING TIME

F.2.15.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the tender data.

F.2.15.2 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of the conditions of tender apply equally to the extended deadline.

F.2.16 TENDER OFFER VALIDITY

F.2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

F.2.16.2 If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period.

F.2.17 CLARIFICATION OF TENDER OFFER AFTER SUBMISSION

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the tender offer should be sought, offered, or permitted. The total of the prices stated by the tenderer shall be binding upon the tenderer.

F.2.18 PROVIDE OTHER MATERIAL

F.2.18.1 Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarize joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as being non-responsive.

F.2.18.2 Dispose of samples of materials, where required.

F.2.19 INSPECTIONS, TESTS AND ANALYSIS

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

F.2.20 SUBMITS SECURITIES, BONDS, POLICIES, ETC.

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

F.2.21 CHECK FINAL DRAFT

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

F.2.22 RETURN OF OTHER TENDER DOCUMENTS

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

F.2.23 CERTIFICATES

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

F.3 EMPLOYER'S UNDERTAKINGS

F.3.1 RESPOND TO CLARIFICATION

Respond to a request for clarification received up to five working days before the tender closing time stated in the tender data and notify all tenderers who drew procurement documents.

F.3.2 ISSUE ADDENDA

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date of the tender notice until 7 days before the tender closing time stated in the tender data. If, as a result of the issuing of addenda, a tenderer applies for an extension to the closing time stated in the tender data, the employer may grant such extension and shall then notify all tenderers who drew documents.

F.3.3 RETURN LATE TENDER OFFERS

Return tender offers received after the closing time stated in the tender data, unopened (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

F.3.4 OPENING OF TENDER SUBMISSIONS

F.3.4.1 Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers's agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

F.3.4.2 Announce at the public meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened, the total of his prices, preferences claimed and time for completion, if any, for the main tender offer only.

F.3.4.3 Make available the name of each tenderer whose tender offer is opened, the total of his prices, if applicable, preferences claimed and time for completion (if any) for the main tender offer only.

F.3.5 TWO-ENVELOPE SYSTEM

F.3.5.1 Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

F.3.5.2 Evaluate the quality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers who score in the quality evaluation more than the minimum number of points for quality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for quality.

F.3.6 NON-DISCLOSURE

Do not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

F.3.7 GROUNDS FOR REJECTION AND DISQUALIFICATION

Determine whether there has been any effort by any tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

F.3.8 TEST FOR RESPONSIVENESS

F3.8.1 Determine, on opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of the conditions of tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

F.3.8.2 A responsive tender is one that conforms to all the items, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the employer's opinion, would

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the scope of work,
- b) change the employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

F.3.8.3 Reject a non-responsive tender offer, and do not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

F.3.9 ARITHMETICAL ERRORS

F.3.9.1 Check responsive tender offers for arithmetical errors, correcting them in the following manner:

- a) Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- b) If a bill of quantities (or schedule of quantities or schedule of rates) applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices, either as a result of other corrections required by this checking process or in the tenderer's additions of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if a bill of quantities applies) to achieve the tendered total of the prices.

F.3.9.2 Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of his arithmetical errors in the manner described in F.3.9.1.

F.3.10 CLARIFICATION OF A TENDER OFFER

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

F.3.11 EVALUATION OF TENDER OFFERS

F.3.11.1 Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate it using the tender evaluation methods that are indicated in the tender data and described as methods 1, 2, 3, and 4.

F.3.11.2 Method 1: In the case of a financial offer:

- a) Rank tender offers from the most favourable to the least favourable comparative offer.
- b) Recommend the highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.3 Method 2: In the case of a financial offer and preferences:

- a) Score tender evaluation points for each financial offer.
- b) Confirm that tenderers are eligible for the preferences claimed and, if so, score tender evaluation points for preferencing.
- c) Calculate total tender evaluation points.
- d) Rank tender offers from the highest number of tender evaluation points to the lowest.
- e) Recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.4 Method 3: In the case of a financial offer and quality:

- a) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.
- b) Score tender evaluation points for each financial offer.
- c) Calculate the total tender evaluation points.
- d) Rank tender offers from the highest number of tender evaluation points to the lowest.
- e) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.5 Method 4: In the case of a financial offer, quality and preferences:

- a) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.
- b) Score tender evaluation points for each financial offer.
- c) Confirm that tenderers are eligible for the preferences claimed and, if so, score tender evaluation points for preferencing.
- d) Calculate total tender evaluation points.
- e) Rank tender offers from the highest number of tender evaluation points to the lowest.
- f) Recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.6 Score financial offer, preferences and quality, as relevant, to two decimal places.

F3.11.6.1 Scoring financial offers

Score the financial offers of the remaining responsive tender offers using the following formula:

$$N_{FO} = W_1 \times A$$

Where

- N_{FO} is the number of tender evaluation points awarded for the financial offer;
- W_1 is the maximum possible number of tender evaluation points awarded for the financial offer as stated in the tender data;
- A is the number calculated using the formula and option described in table F.1 as stated in the tender data.

Table F.1 - Formula for calculating the value of A^a

1	2	3	4
Formula	Basis for comparison	Option 1	Option 2
1	Highest price or discount	$1 + \frac{P - P_m}{P_m}$	P/P_m
2	Lowest price or percentage commission/fee	$1 - \frac{P - P_m}{P_m}$	P_m/P
<p>^a P_m is the comparative offer of the most favourable comparative offer. P is the comparative offer of the tender offer under consideration.</p>			

F.3.11.6.2 Scoring quality

Score quality in each of the categories in accordance with the tender data and calculate the total score for quality.

F.3.12 INSURANCE PROVIDED BY THE EMPLOYER

If requested by the proposed successful tenderer, submit for the tenderer’s information the policies or certificates of insurance (or both) which the conditions of contract identified in the contract data require the employer to provide.

F.3.13 ACCEPTANCE OF TENDER OFFER

F.3.13.1 Accept the tender offer only if the tenderer complies with the legal requirements, if any, stated in the tender data.

F.3.13.2 Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period. Provided that the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a contract between the employer and the successful tenderer as described in the form of offer and acceptance.

F.3.14 NOTICE OF UNSUCCESSFUL TENDERERS

After the successful tenderer has acknowledged the employer's notice of acceptance, notify other tenderers that their tender offers have not been accepted.

F.3.15 PREPARE CONTRACT DOCUMENTS

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of

- a) addenda issued during the tender period;
- b) inclusion of some of the returnable documents;
- c) other revisions agreed between the employer and the successful tenderer, and
- d) the schedule of deviations attached to the form of offer and acceptance, if any.

F.3.16 ISSUE FINAL CONTRACT

Prepare and issue the final draft of contract documents to the successful tenderer for acceptance as soon as possible after the date of the employer's signing of the form of offer and acceptance (including the schedule of deviations, if any). Only those documents that the conditions of tender require the tenderer to submit, after acceptance by the employer, shall be included.

F.3.17 COMPLETE ADJUDICATOR'S CONTRACT

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

F.3.18 PROVIDE COPIES OF THE CONTRACTS

Provide to the successful tenderer the number of copies stated in the tender data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACTS

1. DEFINITIONS

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

Contract

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

Contract Data

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

Contract Price

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

Day

A calendar day.

Defect

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

Deliverable

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

Employer

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

Force Majeure

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

Key Persons

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

Others

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

Parties

The Employer and the Service Provider.

Period of Performance

The period within which the Services are to be performed and completed.

Personnel

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

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Date

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract Price.

Project

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

Scope of Work

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

Service Provider

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

Services

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

Subcontractor

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

2. **INTERPRETATION**

2.1 Unless inconsistent with the context, an expression which denotes :

- a) any gender includes the other genders;

- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. **GENERAL**

3.1 **Governing law**

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

3.2 **Change in legislation**

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

3.3 **Language**

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

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

3.4 **Notices**

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

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

3.5 **Location**

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

3.6 **Publicity and publication**

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

3.7 **Confidentiality**

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

3.8 **Variations**

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

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

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

3.9 **Sole agreement**

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

3.10 **Indemnification**

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.11 **Penalty**

3.11.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or

an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.11.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.11.1, he may after giving notice to the Service Provider:

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

3.12 **Equipment and materials furnished by the Employer**

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

3.12.1 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.12.1 for their full replacement value.

3.13 **Illegal and impossible requirements**

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

3.14 **Programme**

3.14.1 The Service Provider shall, within the time period set out in the Contract Data, submit to the Employer a programme for the performance of the Services which shall, *inter alia*, include :

- a) the order and timing of operations by the Service Provider and any actions required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them; and
- c) other information as required in terms of the Scope of Work or Contract Data.

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

3.14.3 The Service Provider shall regularly update the programme to reflect actual progress to date and expected future progress.

4. **EMPLOYER'S OBLIGATIONS**

4.1 **Information**

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

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

4.2 **Decisions**

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

4.3 **Assistance**

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

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

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

4.4 **Services of Others**

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

4.5 **Notification of material change or defect**

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

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

b) a material defect or deficiency in the Services.

4.6 Issue of instructions

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

4.7 Payment of Service Provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.2 Exercise of Authority

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

5.3 Designated Representative

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

5.4 Insurances to be taken out by the Service Provider

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

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

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

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

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

5.6 **Co-operation with Others**

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

5.7 **Notice of change by Service Provider**

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

6. **CONFLICTS OF INTEREST**

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

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

6.2 **Royalties and the like**

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

6.3 **Independence**

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

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required performing the Services.

7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.

7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.2.2 Where the Service Provider purpose to utilize a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

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

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

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.

- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. **COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION**

8.1 **Commencement of Services**

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

8.2 **Completion**

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

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

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

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

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

8.3 **Force Majeure**

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

conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

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

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

8.4 **Termination**

8.4.1 The Employer may terminate the Contract:

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

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

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

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

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

8.5 **Suspension**

8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimize further expenditure.

8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rate payment for the Services carried out and reimbursement of all reasonable cost incidents to the prompt and orderly suspension of the Contract.

8.6 **Rights and liabilities of the Parties**

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

9. **OWNERSHIP OF DOCUMENTS AND COPYRIGHT**

9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to the Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.

9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10. **SUCCESSION AND ASSIGNMENT**

10.1 Except as defined in Clause 8.4.4. above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.

- 10.2 An assignment shall be valid only if it is a written agreement, by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest there under, except in the following:
- a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
 - b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

11. **SUBCONTRACTING**

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The Services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 12 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.
- 11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.
- 11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.
- 11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. **RESOLUTION OF DISPUTES**

12.1 **Settlement**

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

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

12.2 **Mediation**

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

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

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

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

12.3 **Adjudication**

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

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

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

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

12.4 **Arbitration**

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

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

13. **LIABILITY**

13.1 **Liability of the Service Provider**

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

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

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

13.2 **Liability of the Employer**

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

13.3 **Compensation**

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

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

13.4 **Duration of Liability**

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 **Limit of Compensation**

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

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

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

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

13.6 **Indemnity by the Employer**

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

13.7 **Exceptions**

- 13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.
- 13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
 - b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14. **REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER**

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

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

15. **AMOUNTS DUE TO THE EMPLOYER**

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