public works
& infrastructure

Department:
Public Works and Infrastructure
REPUBLIC OF SOUTHAFRICA

QUOTATION DOCUMENT

PROJECT DESCRIPTION: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

QUOTATIO NO:	**MTHQ134/26**
Closing Date:	**07 September 2026**
Closing Time:	**11h00**
Bid Briefing Meeting Date:	[Status]
Bid Briefing Meeting time:	[Subject]

***Tenderers CSD No*:** .....

Name of the Tenderer: .....

Bid Box Address

PRD 2 Building , 5th Floor
Sutherland Street
Mthatha
5099

SCM SPECIFIC ENQUIRIES:	**TECHNICAL / PROJECT SPECIFIC ENQUIRIES**
Enquires: **Nomataso Mbundu**	Enquires: **Mbulelo Mabusela**
Tel No: **047 502 7107** during office hours	Tel No: **012 492 3118** during office hours
Cell No: **079 517 3957**	Cell No: **082 552 4277**
Email Address: Nomataso.Mbundu@dpw.gov.za	Email Address: Kholiswa.notununu@dpw.gov.za

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SUMMARY OF QUOTATION INFORMATION

Bid Number	MTHQ134/26	
Bid/ Project Description	REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT	
Bid Closing date & Time	**Monday, 07 September 2026**	**Closing Time: 11h00**
Bid Briefing Date & Time (If applicable)	*Date of Bid Briefing (if any)* [Status]	*Time of Bid Briefing (if any)* [Subject]
Venue	[Company Address]	
SCM SPECIFIC ENQUIRIES:	**Nomataso Mbundu**	Nomataso.Mbundu@dpw.gov.za
	047 502 7107	**079 517 3957**
TECHNICAL / PROJECT SPECIFIC ENQUIRIES	**Kholiswa Notununu**	Kholiswa.notununu@dpw.gov.za
	012 492 3118	**082 552 4277**
Bid Validity Period	**84 calendar days**	
Bid Document Price	**Free of Charge**	
Procurement Plan Reference Number	**3292358**	

PA-03 (EC): NOTICE AND INVITATION FOR QUOTATION

THE DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE INVITES TENDERS FOR:

Project title:	**REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT**		
Bid no:	**MTHQ134/26**	**Procurement Plan Reference no:**	**3292358**
Advertising date:	**Tuesday, 01 September 2026**	**Closing date:**	**Monday, 07 September 2026**
Closing time:	**11h00**	**Validity period:**	**84 calendar days**

1. REQUIRED CIDB GRADING

It is estimated that tenderers should have a CIDB contractor grading designation of ***1 SO*** *or* ***1 SO**** or higher.
** Delete "or select tender value range select class of construction works" where only one class of construction works is applicable*

It is estimated that potentially emerging enterprises should have a CIDB contractor grading designation of ***select tender value range select class of construction works*** **PE** *or* ***select tender value range select class of construction works*** **PE*** or higher.
** Delete "or select tender value range select class of construction works PE" where only one class of construction works is applicable*

2. FUNCTIONALITY CRITERIA APPLICABLE

2.1 The Bid will be evaluated on Functionality and the following Functionality evaluation criteria will apply and failure to meet minimum functionality score will result in the tenderer being disqualified. From further evaluation:

Functionality criteria[1]:		**Weighting factor:**
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
TOTAL		N/A

(Weights for functionality must add up to 100. Weightings will be multiplied by the scores allocated during the evaluation process to arrive at the total functionality points)

Minimum functionality score to qualify for further evaluation:	N/A

(Total minimum qualifying score for functionality is 50 Percent, any deviation below or above the 50 Percent, provide motivation below)

[1]The points allocated to each functionality criterion should not be generic but should be determined separately for each tender on a case by case basis.

3. METHOD TO BE USED TO CALCULATE POINTS FOR SPECIFIC GOALS

3.1. **The following Evaluation Method for responsive bids will be applicable:**

☐ Method 1 (Financial offer)	☒ Method 2 (Financial and Preference offer)

3.2. **The 80/20 Preference points scoring system will be applicable for this bid**

4. RESPONSIVENESS CRITERIA

4.1 **Indicate substantive responsiveness criteria applicable for this tender. Failure to comply with the criteria stated hereunder shall result in the tender offer being disqualified from further consideration:**

1	☒	Only those tenderers who satisfy the eligibility criteria stated in the Tender Data may submit tenders.
2	☒	Tender offer must be properly received on the tender closing date and time specified on the invitation, completed either electronically (if issued in electronic format), or by writing legibly in non-erasable ink. (All as per Standard Conditions of Tender).
3	☒	Use of correction fluid is prohibited. Corrections to be crossed out and initialled.
4	☒	~~Submission of a signed bid offer as per the DPW-07 (EC).~~
5	☒	~~Submission of DPW-09 (EC): Particulars of Tenderer's Projects.~~
6	☐	Bidders must comply with DPW-21 (EC): Record of Addenda to tender documents, if any.
7	☐	The tenderer shall submit his fully priced Bills of Quantities / Lump Sum Document (complete document inclusive of all parts) together with his tender.
8	☐	Submission of DPW-16.1 signed by the authorised official and completion of bid briefing attendance register.
9	☐	The tenderer shall submit his fully priced and completed sectional summary- and final summary pages with the tender.
10	☒	**Submission of an offer**
11	☐	**Specify other responsiveness criteria**
12	☐	**Specify other responsiveness criteria**

3.3. **Indicate administrative requirements applicable for this tender. Tenderers may be required to submit the below documents where applicable.**

The Employer reserves the right to request further information regarding the undermentioned criteria. Failing to submit further clarification and/or documentation within seven (7) calendar days from request or as specifically indicated, will disqualify the tender offer from further consideration.

1	☒	Any correction to be initialled by the person authorised to sign the tender documentation as per PA 15.1 or PA 15.2 resolution of board/s of directors / or PA15.3 Special Resolution of Consortia or JV's.
2	☒	Submission of applicable (PA-15.1, PA-15.2, PA-15.3): Resolution by the legal entity, or consortium / joint venture, authorising a dedicated person(s) to sign documents on behalf of the firm / consortium / joint venture.
3	☒	Submission of (PA-11): Bidder's disclosure
4	☒	Submission of PA-16.1 (EC): Ownership Particulars
5	☒	Submission of documentation relating to **risk assessment criteria** as contained in C 2.1 of T1.2 Tender Data.

6	☒	Data provided by the Service Provider (C1.2.3) completed.
7	☒	Submission of proof of Registration on National Treasury's Central Supplier Database (CSD). Insert the Supplier Registration Number on the form of offer, including proposed sub-contractors if any
8	☒	All parts of tender documents submitted must be fully completed in ink and signed where required.
9	☒	Upon request, submission of fingerprints obtainable from local SAPS including any other additional documentation and information required for vetting purposes.
10	☐	Upon request, submission of a fully completed security clearance application form with supporting documentation and information as required. The security clearance form will be provided by the Employer for projects requiring a security clearance.
11	☐	**Specify other responsiveness criteria**
12	☐	**Specify other responsiveness criteria**
13	☐	**Specify other responsiveness criteria**
14	☐	**Specify other responsiveness criteria**
15	☐	**Specify other responsiveness criteria**

3.4. **Indicate administrative requirements applicable for specific goals, Tenderers will not be required to submit the below document if not provided in the original tender proposals, Failure to comply with the criteria stated hereunder shall result in the tenderer not allocated points for specific goals.**

1	☒	Submission of (PA-16): Preference Points Claim Form in terms of the Preferential Procurement Regulations 2022

5. EVALUATION METHOD

5.1 The following Evaluation Method for responsive bids will be applicable:

☐ Method 1 (Financial offer)	☒ Method 2 (Financial and Preference offer)

5.2. This bid will be evaluated according to the 80/20 Preference points scoring system

6. METHOD TO BE USED TO CALCULATE POINTS FOR SPECIFIC GOALS

6.1. For procurement transaction with rand value greater than R2 000, 00 and up to R1 Million (Inclusive of all applicable taxes) the specific goals listed below are applicable.

Serial No	Specific Goals	Preference Points Allocated out of 20	Documentation to be submitted by bidders to validate their claim
1.	An EME or QSE which is at least 51% owned by black people	10	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.
2.	Located in a specific Local Municipality or District Municipality or Metro or Province area for work to be done or services to be rendered in that area (Mandatory)	2	• Official Municipal Rates Statement which is in the name of the bidder. Or • Any account or statement which is in the name of the bidder. Or • Permission To Occupy from local chief in case of rural areas (PTO) which is in the name of the bidder. Or • Lease Agreement which is in the name of the bidder.
3.	An EME or QSE which is at least 51% owned by black women	4	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.

Serial No	Specific Goals	Preference Points Allocated out of 20	Documentation to be submitted by bidders to validate their claim
4.	An EME or QSE which is at least 51% owned by black people with disability	2	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable. and • Medical Certificate indicating that the disability is permanent. Or • South African Social Security Agency (SASSA) Registration indicating that the disability is permanent. Or • National Council for Persons with Physical Disability in South Africa registration (NCPPDSA).
5.	An EME or QSE which is at least 51% owned by black youth	2	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.

7. BID EVALUATION METHOD

This bid will be evaluated according to the preferential procurement model in the PPPFA and the 80/20 preference point scoring system will be applicable

8. ELIGIBILITY IN RESPECT OF RISK TO THE EMPLOYER:

Standard risk management assessment criteria in respect of tenders received for routine projects in the engineering and construction works environments:

Tender offers will be evaluated by an Evaluation Committee based on the technical and commercial risk criteria listed hereunder. Each criterion carries the same weight / importance and will be evaluated individually based on reports presented to the Bid Evaluation Committee by the Professional Team appointed on the project. A tender offer will be declared non-responsive and removed from any further evaluation if any one criterion is found to present an unacceptable risk to the Employer.

In order for the evaluation reports to be prepared by the Professional Team, the Tenderer is obliged to provide comprehensive information on form DPW-09 (EC). Failure to complete the said form will cause the tender to be declared non-responsive and removed from any further consideration. The Employer reserves the right to request additional information over and above that which is provided by the Tenderer on said form. The information must be provided by the Tenderer within the stipulated time as determined by the Bid Evaluation Committee, failing which the tender offer will *mutatis mutandis* be declared non-responsive.

7.1 Technical risks:

Criterion 1: Experience on comparable projects during the past 5 up to 10 years.
The tendering Service Provider's experience on comparable projects during the past 5 up to 10 years. The number of current and previous comparable projects performed by the Tenderer as per the evaluation report prepared by the Consultant Team, based on its research and inspection of a representative sample of the Tenderer's current and previous work as reflected on form DPW-09 (EC), as well as, if necessary, of any additional work executed by the Tenderer, not reflected on form DPW-09 (EC). Failing to provide contactable references will result in the tender offer will be *mutatis mutandis* declared non-responsive. Aspects to be regarded as "comparable" includes (but may be extended according to circumstances): size of projects (measured against monetary value or other project quantifying parameters), nature of projects (building, engineering, high/low rise, etc.), locality/area of execution (site-specific influences, knowledge of local conditions, etc.), complexity of project, projects for similar client department irrespective of end purpose of buildings/facilities created or in progress of being created and time scales of projects (normal, fast track, etc.) and stage of its/their development.

Criterion 2: Contractual commitment and quality of performance on comparable projects during the past 5 up to 10 years.

Adherence to contractual commitments and quality of performance of comparable current and previous projects performed by the Tenderer during the past 5 up to 10 years as per the evaluation report prepared by the Consultant Team, based on its research and inspection of a representative sample of the Tenderer's current and previous work as reflected on form DPW-09 (EC), as well as, if necessary, of any additional work executed by the Tenderer, not reflected on form DPW-09 (EC). Failing to provide contactable references will result in the tender offer be *mutatis mutandis* declared non-responsive.

Aspects to be considered include, but are not limited to the following:

1. The level of progress on current projects in relation to the project programme or, if such is not available/applicable, to the contractual construction period in general;
2. The degree to which previous projects have been completed within the contractual completion periods and/or extensions thereto, and the extend of penalties imposed;
3. Project performance: time management & programming of works, timeous ordering of materials and appointment of subcontractors;
4. Financial management: payment to suppliers and cash flow problems;
5. Quality of workmanship: extent of reworks and timeous attention to remedial works;
6. Personnel resources: suitably qualified and experienced, turnover in site staff and labour force, specifically site manager and foreman;
7. Personnel management: extent of labour disputes and ability to resolving labour disputes amicably;
8. Sub-contractors: extent of turnover in subcontractors, general liaison and payment problems experienced;
9. Contract administration: contractual aspects such as complying to laws and regulations, insurances, security, submission of required documentation timeously, reaction to written contract instructions, appointments of subcontractors, etc. as can generally be expected in standard/normal conditions of contract.
10. Health & Safety: adherence to regulations and compliance, and number of transgressions & serious incidents.
11. Plant & equipment: sufficient resources on site and in time.
12. Delays: extent of causing delays, submission of claims timeously, and abuse of or exaggerated delay claims.
13. Final account: extent to which the contractor assisted in finalising the final account.

Criterion 3: Suitably qualified and appropriately experienced human resources

Allocation of suitably qualified and appropriately experienced human resources, both in respect of principals and/or other staff (contract manager, site agent, site foreman including other professional, technical and/or administrative) of the tendering Service Provider to the project, as proof that the tendering Service Provider will be able to react/respond appropriately to the Services required herein. The Company Organogram with CV's and certified ID's of all principals and employed workforce as well as proof of Professional Registration will be verified. Current and future workload of the tenderer in relation to capacity and capability will also be considered. The tenderer should demonstrate that he or she possesses the necessary professional and technical qualifications and -competence in relation to the scope of work and work to be undertaken.

Criterion 4: Attendance of compulsory bid clarification meeting, if applicable

If applicable, submission of confirmation of DPW-16.1 (PSB) attendance of compulsory bid clarification meeting or proof of attending the compulsory virtual meeting by a suitably qualified and experienced representative of the tenderer in terms of PA-04 (EC): Notice and Invitation to Tender.

7.2 Commercial risks:

The financial viability assessment evaluates the risk over the life of the construction period, as to whether the tenderer will be able to deliver the goods and services which are specified in the contract and / or be able to fulfil guarantees or warranties provided for in the contract in order to complete the project successfully for the amount tendered.

Aspects to be considered include but are not limited to, the respective rates tendered, bank rating, financial capability and capacity whether the tenderer has or has access to sufficient financial resources to deliver the goods or services described in the tender documentation (including fulfilling any guarantees or warranty claims), whether the tenderer is not subject to any current or impending legal action (either formal proceedings or notification of legal action) which could impact on the financial standing of the tenderer or the delivery of the goods or services, financial report from auditors as proof of current liquidity, and company or any parent company or investor guarantee/s and financial statements.

9. CONTRACT PARTICIPATION GOAL TARGETS AND CIDB B.U.I.L.D. PROGRAMME

The contractor shall achieve in the performance of the contract the following Contract Participation Goals (CPGs) as described in PG-01.2 (EC): Scope of Work and PG-02.2 (EC): Pricing Assumptions and in accordance with the feasibility study, which forms part of the specifications in the CPG Section of the Specification of this contract.

(a)	Minimum Targeted Local Manufacturers of Material Contract Participation Goal, in accordance with the cidb Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts as published in the Government Gazette Notice No. 41237 of 10 November 2017, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract.	**Not applicable**
(b)	Minimum Targeted Local Building Material Suppliers Contract Participation Goal in accordance with the cidb Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts as published in the Government Gazette Notice No. 41237 of 10 November 2017, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract.	**Not applicable**
(c)	Minimum Targeted Local Labour Skills Development Contract Participation Goal in accordance with the cidb Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts as published in the Government Gazette Notice No. 41237 of 10 November 2017, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract.	**Not applicable**
(d)	**CIDB BUILD Programme**: Minimum Targeted Enterprise Development Contract Participation Goal in accordance with the cidb Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts, No 36190 Government Gazette, 25 February 2013, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract.	**Not applicable**
(e)	**cidb BUILD Programme:** Minimum Targeted Contract Skills Development Goal in accordance with the cidb Standard for Developing Skills through Infrastructure Contracts as published in the Government Gazette Notice No. 43495 of 3 July 2020, as amended in cidb Best Practice Project Assessment Scheme Notice No. 43726 of 18 September 2020 – Condition of Contract.	**Not applicable**
(f)	DPWI National Youth Service training and development programme (NYS) – Condition of Contract.	**Not applicable**
(g)	Labour Intensive Works – Condition of Contract.	**Not applicable**

10. COLLECTION OF TENDER DOCUMENTS

☐ Bid documents are available for free download on e-Tender portal www.etenders.gov.za

☐ Alternatively; Bid documents may be collected during working hours at the following address NDPWI, Eben Donges Building, Cnr Robert and Hancock street, Gqeberha, 6056.
A non-refundable bid deposit of **Free of Charge** is payable (cash only) on collection of the bid documents.

11. SITE INSPECTION MEETING

Details of Bid Briefing meeting (if any)
There will be no bid briefing meeting.

Venue:	[Company Address]		
Virtual meeting link:	(Type link here or indicate "N/A")		
Date:	*Date of Bid Briefing (if any)* [Status]	**Starting time:**	*Time of Bid Briefing (if any)* [Subject]

12. ENQUIRIES

12.1 Technical enquiries may be addressed to:

DPWI Project Manager	**Mbulelo Mabusela**	**Telephone no:**	**012 492 3118**
Cellular phone no	**082 552 4277**	**Fax no:**	**Type Fax number here or indicate " NONE"**
E-mail	Kholiswa.notununu@dpw.gov.za		

12.2 SCM enquiries may be addressed to:

SCM Official	**Nomataso Mbundu**	**Telephone no:**	**047 502 7107**
Cellular phone no	**079 517 3957**	**Fax no:**	**n/a**
E-mail	Nomataso.Mbundu@dpw.gov.za		

13. DEPOSIT / RETURN OF TENDER DOCUMENTS

Telegraphic, telephonic, telex, facsimile, electronic and / or late tenders will not be accepted.

Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.
All tenders must be completed in non-erasable ink and submitted on the official forms – (forms not to be re-typed).

Closing Date: **Monday, 07 September 2026**
Closing Time: **11h00**

Tender documents may be posted to: The Director-General Department of Public Works and Infrastructure Private Bag X Email Address : Mthatha.Quotations@dpw.gov.za Documents must be deposited in The Bid Box before the closing date of the bid	**OR**	**Deposited in the tender box at:** The Bid Box Department of Public Works & Infrastructure PRD 2 Building , 5th Floor Sutherland Street Mthatha 5099

EVALUATION ON FUNCTIONALITY

Paste Functionality Criteria here

DPW-07: FORM OF OFFER AND ACCEPTANCE

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

Bid no: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

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

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

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX (All applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies) IS:

Rand (in words):	
Rand in figures:	**R**

The award of the tender may be subjected to price negotiation with the preferred tender(s). The negotiated and agreed price will be considered for acceptance as ***a firm and final offer***.

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

THIS OFFER IS MADE BY THE FOLLOWING LEGAL ENTITY: (cross out block which is not applicable)

Company or Close Corporation: .... And: Whose Registration Number is: ..... And: Whose Income Tax Reference Number is: ..... CSD supplier number:	**OR**	Natural Person or Partnership: .... Whose Identity Number(s) is/are: ..... Whose Income Tax Reference Number is/are: ..... CSD supplier number: .....

AND WHO IS (if applicable):

Trading under the name and style of: .....

AND WHO IS:

Represented herein, and who is duly authorised to do so, by: Mr/Mrs/Ms: ..... In his/her capacity as:	**Note:** **A Resolution / Power of Attorney, signed by all the Directors / Member / Partners of the Legal Entity must accompany this Offer, authorising the Representative to make this offer.**

Bid No: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

SIGNED FOR THE TENDERER:

Name of representative	Signature	Date

WITNESSED BY:

Name of witness	Signature	Date

This Offer is in respect of: (Please indicate with an "X" in the appropriate block) ☐
The official documents ..... ☐
The official alternative ..... ☐
Own alternative (only if documentation makes provision therefore)

SECURITY OFFERED: (Not required for this quotation/ bid)

The Service Provider will provide one of the following forms of security:

(1) Cash deposit of 2.5% of the Contract Sum (excl. VAT)	Yes ☐	No ☒
(2) Variable guarantee of 2.5% of the Contract Sum (excl. VAT) (DPW-10.5: FM)	Yes ☐	No ☒
(3) Retention of 2.5% of the Contract Sum (excl. VAT)	Yes ☐	No ☒
(4) 1.25% cash deposit and 1.25% retention of the Contract Sum (excl. VAT)	Yes ☐	No ☒

NB. Guarantees submitted must be issued by either an insurance company duly registered in terms of the Short-Term Insurance Act, 1998 (Act 35 of 1998) or by a bank duly registered in terms of the Banks Act, 1990 (Act 94 of 1990) on the pro-forma referred to above. No alterations or amendments of the wording of the pro-forma will be accepted.

The Tenderer elects as its *domicilium citandi et executandi* in the Republic of South Africa, where any and all legal notices may be served, as (physical address):

.....

Other Contact Details of the Tenderer are:

Telephone No..... Cellular Phone No. .....

Fax No. .....

Postal address.....

Banker ..... Branch.....

Bank Account No. ..... Branch Code .....

Registration No of Tenderer at Department of Labour.....

ACCEPTANCE

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

Bid No: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

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 4 Site information

and drawings (where applicable) and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

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

Notwithstanding anything contained herein, this agreement comes into effect, if delivered by hand on the day of delivery, or if delivered by courier within two working days after submission by the Employer to the courier services for a door-to door delivery to the tenderer, provided that the Employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now Service Provider) within seven working days of the date of such submission notifies the Employer in writing of any reason why he cannot accept the contents of the schedule of deviation to this agreement if applicable), this agreement shall constitute a binding contract between the parties.

For the Employer:

Name of signatory	Signature	Date

Name of Organisation:	Department of Public Works
Address of Organisation:	

WITNESSED BY:

Name of witness	Signature	Date

SCHEDULE OF DEVIATIONS

Bid no: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

1.1.1. Subject:
Detail:

1.1.2. Subject:
Detail:

1.1.3. Subject:
Detail:

1.1.4. Subject:
Detail:

1.1.5. Subject:
Detail:

1.1.6. Subject:
Detail:

By the duly authorised representatives signing this agreement, the Employer and the Tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

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

TERMS OF REFERENCE/ SPECIFICATIONS

Bid no: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

public works
& infrastructure
Department:
Public Works and Infrastructure
REPUBLIC OF SOUTH AFRICA

Day to Day Maintenance – Request for Quotations

Service Description: ..Repairs to leaking water pipe.....

Reference No.: 3292358

Required CIDB Grading: 1SO or Higher

Project Manager Details	**Client Details**
DPWI – Mthatha Regional Office	**Facility Name:** ..Tsolo Magistrate Court
Project Manager: KHOLISWA NOTUNUNU	Contact Person: ...Ms. Khumalo
Contact Number: ..082 552 4277	Contact Number: ..072 138 8204
Email Address: kholiswa.notununu@dpw.gov.za	Email Address:

A - CONDITIONS OF TENDER

Upon arrival on site contractor must introduce themselves and explain what they will be doing to the relevant official/client before commencement with work. Contractor to provide basic tools while rendering service on site.
Time shall be considered as the essence of this contract. ***The service provider after receiving the appointment in the form of purchase order or letter of appointment must immediately visit the site to conduct a thorough inspection and investigation as per the appointment and further contact Project Manager for more information about the scope of work. While on-site the service provider must make safe where necessary.***

Prior to commencement with repair work on site, contractor to provide the Project Manager with pro-forma invoice detailing material cost, labour and travelling. Cost of labour and travelling will be based on tender rates. Project Manager will review the pro-forma invoice and grant approval if He/she is in agreement.

Work on-site should be completed within agreed time frames, failure to conduct an assessment two days after receiving appointment and immediately commence with service after agreement on the pro-forma and or complete service within the agreed timeframes will lead to termination of the contract.

At completion of the service onsite the Contractor is to submit compliant invoice at invoice.mthatha@dpw.gov.za together with signed job card, declaration forms & timesheet by both Client and contractor. Failure to submit complete information will lead to non-payment of the invoice.

Paragraph 4.12 of FM Circular 31 of 2024 – All service providers must submit their invoices within **30 days** after a job has been completed, together with a signed and stamped date of completion as per the User Department. Invoices not submitted within **30 days** will be considered invalid for payment.

Invoice Submission and Payment Terms:

"The Contractor shall submit a detailed invoice to the DPWI, within sixteen (16) calendar days following the completion of the work or the delivery of services. The invoice must include all necessary documentation, including but not limited to, itemised costs, job cards.

Failure to submit an invoice within the aforementioned period shall result in a forfeiture of the right to receive payment for the completed work or services. The DPWI shall have no obligation to make any payments for work completed or services rendered if the invoice is not submitted within the specified 16-day period."

All invoices submitted by the Service Providers, must include the ***Archibus system generated call ID*** as DPWI reference, ***together with the relevant order number***.
The contractor must be registered and compliant on both **CSD & CIDB** and registration to be valid throughout the service, with relevant registration for the classification of works as mentioned above. Contractor to ensure compliance with all Occupational Health and Safety regulations and instructions.

B - Notes to Tenderers

Contractor to note that all quantities are re-measurable. For material purchased contractor must submit original copies of supplier's invoice together with their invoice, failure to submit the supplier's invoices will result to non-payment of the items claimed without supplier's invoice. Contractor must leave all spares or equipment replaced onsite and inform the facility contact person of the spares or equipment, not unless instructed otherwise by the Project Manager. DPWI does pay contractor to hire basic tools and there must be a written approval from the Project Manager to service provider to hire any equipment. Service provider bidder must comply with the current labour rates as gazetted by Department of Labour.

Full day for work with reference to Per Day in the bill of quantities is taken to be 8 hours. Kilometres per site visit or per return trip from site are curbed at maximum of 200km. Should the contractor require to buy material out of town must request and get approval from Project Manager.

Kilometres claimed by contractor to be verified prior to issuing payment. If the contractor's office is less than 50km away from the site, then must claim the correct kilometres i.e if the contractor's office is 20km to the site he/she will be eligible to claim return trip of 40km only.

Contractor must request approval from the Project Manager to work over weekends or public holiday & approval must granted by Project Manager prior to work on weekends or holidays, failure to secure approval to work over weekends or holiday will result to contractor being paid on normal day rates.

C - Rate Based Bill of Quantities

NB! RATES FOR LABOUR (SKILLED & UNSKILLED) ARE MEASURED PER DAY

Item	Description	Unit	Quantity	RATES
1.	Skilled Labour – [**Weekdays** (Mon – Fri)]	Per Day	1	
2.	Unskilled Labour – [**Weekdays** (Mon – Fri)]	Per Day	1	
3.	Skilled Labour – [**Weekends/Holidays**]	Per Day	1	
4.	Unskilled Labour - [**Weekends/Holidays**]	Per Day	1	
5.	Travelling	km	1	
6.	Percentage Markup on the non-scheduled items / materials to be purchased. Proof of purchase for materials to be supplied as mentioned in the document.	%		
7.	Percentage markup on the cost to hire equipment.	%		
8.	**Sub Total**			
9.	**Vat @ 15%**			
10.	**Grand Total**			

Full name of bidder:.....

.....

Phone no: (.....).....

....

Signature (Director) Date

PRICING SCHEDULE/ BILLL OF QUANTITIES

Bid no: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

Paste Pricing Schedule here

DRPW – 03 (EC) TENDER DATA

Bid no: MTHQ134/26

Bid/ Project Description: REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT

Paste Tender Data here

PA-11: BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. BIDDER'S DECLARATION

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest[3] in the enterprise, employed by the state?

☐ YES ☐ NO

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

Full Name	Identity Number	Name of State institution

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

Any reference to words "Bid" or Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".
For External Use

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

☐ YES ☐ NO

2.2.1 If so, furnish particulars:

.....

.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

☐ YES ☐ NO

2.3.1 If so, furnish particulars:

.....

.....

3. DECLARATION

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

3.1 I have read and I understand the contents of this disclosure;

3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium[4] will not be construed as collusive bidding.

3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

3.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

[4] 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.

Any reference to words "Bid" or Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".
For External Use

3.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I DECLARE THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

Name of Bidder	Signature	Date	Position

This form is aligned to SBD 4.

PA-15.1: RESOLUTION OF BOARD OF DIRECTORS

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 submits a Tender to the Department of Public Works in respect of the following project:

_____

_____
(project description as per Tender Document)

Tender Number: _____ *(Tender Number as per Tender Document)*

2 *Mr/Mrs/Ms: _____

in *his/her Capacity as: _____ *(Position in the Enterprise)*

and who will sign as follows:

_____

be, and is hereby, authorised to sign the Tender, and any and all other documents and/or correspondence in connection with and relating to the Tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the Tender to the Enterprise mentioned above.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Note:

1. ** Delete which is not applicable.*
2. ***NB:** This resolution must, where possible, be signed by <u>all</u> the Directors / Members / Partners of the Tendering Enterprise.*
3. *In the event that paragraph 2 cannot be complied with, the resolution must be signed by Directors / Members / Partners holding a majority of the shares / ownership of the Tendering Enterprise (attach proof of shareholding / ownership hereto).*
4. *Directors / Members / Partners of the Tendering Enterprise may alternatively appoint a person to sign this document on behalf of the Tendering Enterprise, which person must be so authorized by way of a duly completed power of attorney, signed by the Directors / Members / Partners holding a majority of the shares / ownership of the Tendering Enterprise (proof of shareholding / ownership and power of attorney are to be attached hereto).*
5. *Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.*

ENTERPRISE STAMP

PA-15.2: 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 submits a Tender, in consortium/joint venture with the following Enterprises:

   _____

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

   to the Department of Public Works in respect of the following project:

   _____

   _____
   (project description as per Tender Document)

   Tender Number: _____ *(Tender Number as per Tender Document)*

1 *Mr/Mrs/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.

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

3 The Enterprise chooses as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and the Contract with the Department in respect of the project under item 1 above:

   Physical address: _____

   _____ Postal Code _____

Postal Address: _____

_____ Postal Code _____

Telephone number: _____ Fax number: _____

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

The tendering enterprise hereby absolves the Department of Public Works from any liability whatsoever that may arise as a result of this document being signed.

Note:

1. ** Delete which is not applicable.*
2. ***NB:** This resolution must, where possible, be signed by <u>all</u> the Directors / Members / Partners of the Tendering Enterprise.*
3. *In the event that paragraph 2 cannot be complied with, the resolution must be signed by Directors / Members / Partners holding a majority of the shares / ownership of the Tendering Enterprise (attach proof of shareholding / ownership hereto).*
4. *Directors / Members / Partners of the Tendering Enterprise may alternatively appoint a person to sign this document on behalf of the Tendering Enterprise, which person must be so authorized by way of a duly completed power of attorney, signed by the Directors / Members / Partners holding a majority of the shares / ownership of the Tendering Enterprise (proof of shareholding / ownership and power of attorney are to be attached hereto).*
5. *Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.*

ENTERPRISE STAMP

PA-15.3: SPECIAL RESOLUTION OF CONSORTIA OR JOINT VENTURES

RESOLUTION of a meeting of the duly authorised representatives of the following legal entities who have entered into a consortium/joint venture to jointly tender for the project mentioned below: *(legally correct full names and registration numbers, if applicable, of the Enterprises forming a consortium/joint venture)*

1 _____

_____

2 _____

_____

3 _____

_____

4 _____

_____

5 _____

_____

6 _____

_____

7 _____

_____

8 _____

_____

Held at _____ *(place)*

on _____ *(date)*

RESOLVED that:

A. The above-mentioned Enterprises submit a tender in consortium/joint venture to the Department of Public Works & Infrastructure in respect of the following project:

_____

_____

(project description as per Tender Document)

Tender Number: _____ *(tender number as per Tender Document)*

B. Mr/Mrs/Ms:_____

in *his/her Capacity as: _____ *(position in theEnterprise)*

and who will sign as follows: _____

be, and is hereby, authorised to sign the tender, and any and all other documents and/or correspondence in connection with and relating to the tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the tender to the Enterprises in consortium/joint venture mentioned above.

C. The Enterprises constituting the consortium/joint venture, notwithstanding its composition, shall conduct all business under the name and style of:

_____

D. The Enterprises to the consortium/joint venture accept joint and several liability for the due fulfilment of the obligations of the consortium/joint venture deriving from, and in any way connected with, the Contract entered into with the Department in respect of the project described under item A above.

E. Any of the Enterprises to the consortium/joint venture intending to terminate the consortium/joint venture agreement, for whatever reason, shall give the Department 30 days' written notice of such intention. Notwithstanding such decision to terminate, the Enterprises shall remain jointly and severally liable to the Department for the due fulfilment of the obligations of the consortium/joint venture as mentioned under item D above.

F. No Enterprise to the consortium/joint venture shall, without the prior written consent of the other Enterprises to the consortium/joint venture and of the Department, cede any of its rights or assign any of its obligations under the consortium/joint venture agreement in relation to the Contract with the Department referred to herein.

G. The Enterprises choose as the *domicilium citandi et executandi* of the consortium/joint venture for all purposes arising from the consortium/joint venture agreement and the Contract with the Department in respect of the project under item A above:

Physical address: _____

_____

_____Postal Code _____

Postal Address: _____

_____

_____Postal Code _____

Telephone number _____ Fax number: _____

E-mail address: _____

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

The tendering enterprise hereby absolves the Department of Public Works & Infrastructure from any liability whatsoever that may arise as a result of this document being signed.

Note:

*1. * Delete which is not applicable.*
*2. **NB:** This resolution must be signed by all the Duly Authorised Representatives of the Legal Entities to the consortium/joint venture submitting this tender, as named in item 2 of Resolution PA-15.2.*
3. Should the number of the Duly Authorised Representatives of the Legal Entities joining forces in this tender exceed the space available above, additional names, capacity and signatures must be supplied on a separate page.
4. Resolution PA-15.2, duly completed and signed, from the separate Enterprises who participate in this consortium/joint venture, must be attached to this Special Resolution (PA-15.3).

DPW-16. TENDER BRIEFING MEETING CERTIFICATE

Project title:	**REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT**		
Tender / Quotation no:	**MTHQ134/26**	**Reference no:**	**3292358**

Date Bid Briefing Meeting: [Status]

Time of Bid Briefing Meeting: [Subject]

Venue: [Company Address]

This is to certify that I,_____

representing _____

attended the tender clarification meeting on: _____

I further certify that I am satisfied with the description of the work and explanations given at the tender clarification meeting and that I understand the work to be done, as specified and implied, in the execution of this contract.

Name of Tenderer	Signature	Date

Name of DPW Representative	Signature	Date

DPW-21: RECORD OF ADDENDA TO TENDER DOCUMENTS

Project title:	**REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT**		
Tender / Quotation no:	**MTHQ134/26**	**Reference no:**	**3292358**

1. I / We confirm that the following communications received from the Department of Public Works before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer: *(Attach additional pages if more space is required)*

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

Name of Tenderer	Signature	Date

2. I / We confirm that no communications were received from the Department of Public Works before the submission of this tender offer, amending the tender documents.

Name of Tenderer	Signature	Date

PA- 40: DECLARATION OF DESIGNATED GROUPS FOR PREFERENTIAL PROCUREMENT

Tender Number: MTHQ134/26
Name of Tenderer ..... ☐ EME[2] ☐ QSE[3] ☐ Non EME/QSE (tick applicable box)

1. **LIST ALL PROPRIETORS, MEMBERS OR SHAREHOLDERS BY NAME, IDENTITY NUMBER, CITIZENSHIP AND DESIGNATED GROUPS.**

Name and Surname #	Identity/ Passport number and Citizenship##	Percentage owned	Black	Indicate if youth	Indicate if woman	Indicate if person with disability	Indicate if living in rural / under developed area/township	Indicate if military veteran
1.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
2.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
4.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
5.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
6.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
7.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
8.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
9.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
10.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

\# Where Owners are themselves a Company, Close Corporation, Partnership etc., identify the ownership of the Holding Company, together with Registration number
\## State date of South African citizenship obtained (not applicable to persons born in South Africa)

[2] EME: Exempted Micro Enterprise
[3] QSE: Qualifying Small Business Enterprise

1. DECLARATION:

The undersigned, who warrants that he/she is duly authorized to do so on behalf of the Tenderer, hereby confirms that:

1 The information and particulars contained in this Affidavit are true and correct in all respects;

2 The Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003), Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), the Preferential Procurement Regulations, 2022, National Small Business Act 102 of 1996 as amended and all documents pertaining to this Tender were studied and understood and that the above form was completed according to the definitions and information contained in said documents;

3 The Tenderer understands that any intentional misrepresentation or fraudulent information provided herein shall disqualify the Tenderer's offer herein, as well as any other tender offer(s) of the Tenderer simultaneously being evaluated, or will entitle the Employer to cancel any Contract resulting from the Tenderer's offer herein;

4 The Tenderer accepts that the Employer may exercise any other remedy it may have in law and in the Contract, including a claim for damages for having to accept a less favourable tender as a result of any such disqualification due to misrepresentation or fraudulent information provided herein;

5 Any further documentary proof required by the Employer regarding the information provided herein, will be submitted to the Employer within the time period as may be set by the latter;

Signed by the Tenderer

Name of representative	**Signature**	**Date**

DPW-09 PARTICULARS OF TENDERER'S PROJECTS

Project title:	**REPAIRS TO LEAKING WATER PIPE AT TSOLO MAGISTRATE COURT**		
Tender / Quotation no:	**MTHQ134/26**	**Closing date: Monday, 07 September 2026**	**Time: 11h00**

Note: The Tenderer is required to furnish the following particulars and to attach additional pages if more space is required.

1. PARTICULARS OF THE TENDERER'S CURRENT AND PREVIOUS COMMITMENTS

1.1. Current projects

	Projects currently engaged in	Name of Employer or Representative of Employer	Contact tel. no.	Contract sum of Project	Scope of Services (Work stages appointed for – eg 1 to 6)	Work stages completed	Work stages in progress
1.							
2.							
3.							
4.							
5.							
6.							
7.							

1.2. **Completed projects**

Projects completed in the last 5 (five) years		Name of Employer or Representative of Employer	Contact tel. no.	Contract sum of Project	Scope of Services (Work stages appointed for – eg 1 to 6)	Date of appointment	Date of completion
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							

Name of Tenderer	Signature	Date

PA-16: 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

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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

1.2 Preference Points System to be applied

☒ The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender shall be awarded for:

1.3.1 Price: Maximum 80 points

1.3.2 Specific Goals: Maximum 20 points

1.4 The maximum points for this tender are allocated as follows:

Preference Points System to be applied	**80/20**
PRICE	**80**
SPECIFIC GOALS	**20**
Total points for Price and Specific Goals	**100**

1.5 Breakdown Allocation of Specific Goals Points

1.5.1 **For procurement transaction with rand value greater than R2 000, 00 and up to R1 Million (Inclusive of all applicable taxes) the specific goals listed below are applicable:**

Serial No	Specific Goals	Preference Points Allocated out of 20	Documentation to be submitted by bidders to validate their claim
1.	An EME or QSE which is at least 51% owned by black people	10	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.
2.	Located in a specific Local Municipality or District Municipality or Metro or Province area for work to be done or services to be rendered in that area	2	• Official Municipal Rates Statement which is in the name of the bidder. Or • Any account or statement which is in the name of the bidder. Or • Permission To Occupy from local chief in case of rural areas (PTO) which is in the name of the bidder. Or • Lease Agreement which is in the name of the bidder.

Serial No	Specific Goals	Preference Points Allocated out of 20	Documentation to be submitted by bidders to validate their claim
3.	An EME or QSE which is at least 51% owned by black women	4	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.
4.	An EME or QSE which is at least 51% owned by black people with disability	2	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable. and • Medical Certificate indicating that the disability is permanent. Or • South African Social Security Agency (SASSA) Registration indicating that the disability is permanent. Or • National Council for Persons with Physical Disability in South Africa registration (NCPPDSA).
5.	An EME or QSE which is at least 51% owned by black youth	2	• SANAS Accredited BBBEE Certificate or Sworn Affidavit where applicable.

1.6 Failure on the part of the tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals, if the service provider/ tenderer did not submit proof or documentation required to claim for specific goals will be interpreted to mean that preference points for specific goals are not claimed.

1.7 The organ of state reserves the right to require of a service provider/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

(a) **"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;

(b) **"price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

(c) **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

(d) **"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

(e) **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. 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:

80/20 **or** **90/10**

$$Ps = 80\left(1 - \frac{Pt - P\,min}{P\,min}\right) \quad \text{or} \quad Ps = 90\left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where

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

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

80/20 **or** **90/10**

$$Ps = 80\left(1 + \frac{Pt - P\,max}{P\,max}\right) \quad \text{or} \quad Ps = 90\left(1 + \frac{Pt - P\,max}{Pmax}\right)$$

Where

Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1,2 and 3 above as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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 (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
1. An EME or QSE or any entity which is at least 51% owned by **Historically Disadvantaged Individuals** (HDI)	10	
2. Located in a specific Local Municipality or District Municipality or Metro or Province area for work to be done or services to be rendered in that area	2	
3. An EME or QSE or any entity which is at least 51% owned by women	4	
4. An EME or QSE or any entity which is at least 51% owned by people with disability	2	
5. An EME or QSE or any entity which is at least 51% owned by youth.*	2	

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. 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]

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.

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

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE - GENERAL

This affidavit **must not** be used for Construction/ CIDB related projects/ services

I, the undersigned,

Full name & Surname	
Identity number	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner (**Select one**) of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	
Trading Name (If Applicable):	
Registration Number:	
Enterprise Physical Address:	
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	
Nature of Construction Business:	
Definition of "Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation- i. before 27 April 1994; or ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"
Definition of "Black Designated Groups"	"Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"

3. I hereby declare under Oath that:

☐ The Enterprise is _____% Black Owned using the flow-through principle as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
☐ The Enterprise is _____% Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
☐ The Enterprise is _____% Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
☐ Black Designated Group Owned % Breakdown as per the definition stated above:

- Black Youth % = _____%
- Black Disabled % = _____%
- Black Unemployed % = _____%
- Black People living in Rural areas % = _____%
- Black Military Veterans % = _____%

☐Based on the Audited Financial Statements/Financial Statements and other information available on the latest financial year-end of _____/_____/_____ the annual Total
Date/ month / year
Revenue was R10, 000,000.00 (Ten Million Rands) or less
☐ Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

100% Black Owned	**Level One** (135% B-BBEE procurement recognition level)	
At Least 51% black owned	**Level Two** (125% B-BBEE procurement recognition level)	
Less than 51% Black Owned	**Level Four** (100% B-BBEE procurement recognition level)	

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.

5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature_____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

Stamp Commissioner of Oaths

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE – GENERAL

This affidavit **must not** be used for Construction/ CIDB related projects/ services

I, the undersigned,

Full name & Surname	
Identity number	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner (**Select one**) of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	
Trading Name (If Applicable):	
Registration Number:	
Enterprise Physical Address:	
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	
Nature of Construction Business:	
Definition of "Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation- i. before 27 April 1994; or ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"
Definition of "Black Designated Groups"	"Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"

I hereby declare under Oath that:

□ The Enterprise is _____% Black Owned using the flow-through principle as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,

□ The Enterprise is _____% Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,

□ The Enterprise is _____% Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,

□ Black Designated Group Owned % Breakdown as per the definition stated above:

- Black Youth % = _____%
- Black Disabled % = _____%
- Black Unemployed % = _____%
- Black People living in Rural areas % = _____%
- Black Military Veterans % = _____%

□ Based on the Audited Financial Statements/ Financial Statements and other information available on the latest financial year-end of _____/_____/_____
Day/ month / year

(the annual Total Revenue was between R10,000,000.00 (Ten Million Rands) and R50,000,000.00 (Fifty Million Rands),

□ Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

100% Black Owned	**Level One** (135% B-BBEE procurement recognition level)	
At Least 51% black owned	**Level Two** (125% B-BBEE procurement recognition level)	

3. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.

4. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature_____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

Stamp Commissioner of Oath

B-BBEE EXEMPTED AFFIDAVIT FOR EXEMPTED MICRO ENTERPRISES (ISSUED IN TERMS OF THE AMENDED CONSTRUCTION SECTOR CODE)

(Gazette Vol. 630 No. 41287)
Issued in terms of paragraph 3.6.2.4.1 (B)

This affidavit **must** be used for Construction/ CIDB related projects/ service **only**

I, the undersigned,

Full name & Surname	
Identity number	

Hereby declare under oath as follows:
1) The contents of this statement are to the best of my knowledge a true reflection of the facts.
2) I am a Member / Director / Owner of the following enterprise and am duly authorized to act on its behalf:

Enterprise Name:			
Trading Name (If Applicable):			
Registration Number:			
Enterprise Physical Address:			
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):			
Nature of Construction Business:	**BEP** (Built Environment Professional)	**Contractor**	**Supplier**
Definition of "Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalization before 27 April 1994; or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date:"		
Definition of "Black Designated Groups"	"Black Designated Groups" means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"		

3) I hereby declare under Oath that as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,

- The Enterprise is _____% Black Owned
- The Enterprise is _____% Black Female Owned
- The Enterprise is _____% Owned by Black Designated Group (provide Black Designated Group Breakdown below as per the definition in the table above)

o Black Youth % _____%
o Black Disabled % _____%
o Black Unemployed % _____%
o Black People living in Rural areas % _____%
o Black Military Veterans % _____%

4) Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of _____/_____/_____, the annual Total Revenue was less than the applicable amount confirmed by ticking the applicable box below.

day *month* *year*

BEP	R1.8 million	
Contractor	R3.0 million	
Supplier	R3.0 million	

If the turnover exceeds the applicable amount in the table above then this affidavit is no longer applicable and an EME certificate must be obtained from a rating agency accredited by SANAS or when applicable a B-BBEE Verification Professional Regulator appointed by the Minister of Trade and Industry.

- Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box below.**

100% Black Owned	**Level One** (135% B-BBEE procurement recognition level)	
At least 51% Black Owned	**Level Two** (125% B-BBEE procurement recognition level)	
At least 30% Black Owned	**Level Four** (100% B-BBEE procurement recognition level)	
Less than 30% Black Owned	**Level Five** (80% B-BBEE procurement recognition level)	

5) I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter.

6) The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature_____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

Stamp Commissioner of Oath

FACILITIES MANAGEMENT CONDITIONS OF CONTRACT (DPW)

SEPT. 2005 VERSION 1

PA-10 (FM): CONDITIONS OF CONTRACT

1. *DEFINITIONS*

1.1. *The following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:*

1.1.1. *"Additional Services" are increases in the quantity of the routine Services detailed in the Scope of Works.*

1.1.2. *"Bill of Quantities" means the document so designated in the Pricing Data that describes the Services and indicates the quantities and rates associated with each item which the Employer agrees to pay the Service Provider for the Services completed;*

1.1.3. *"Certificate of Completion" means the certificate issued by the Service Manager signifying that the Contract has expired;*

1.1.4. *"Commencement Date" means the date on when the Service Provider is notified of the Employer's acceptance of its offer;*

1.1.5. *"Contract" means the Contract signed by the Parties and of which these Conditions of Contract form part of, and such amendments and additions to the Contract as may be agreed in writing between the Parties;*

1.1.6. *"Contract Data" means the specific data, which together with these Conditions of Contract, Scope of Works and Pricing Data collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract;*

1.1.7. *"Contract Period" is from Commencement Date for the period stated in the Contract Data;*

1.1.8. *"Contract Price" means the price to be paid for the Services in accordance with the Pricing Data, subject to such additions thereto or deductions there from as may be made from time to time under the provisions of the Contract;*

1.1.9. *"Contract Sum" refers to the amount stated by the Service Provider in the Form of Offer and Acceptance;*

1.1.10. *"CPAP" means contract price adjustment provisions used for the adjustment of fluctuations in the cost of labour, plant and materials and goods as stated in the Contract Data;*

1.1.11. *"Day" means a calendar day;*

1.1.12. *"Drawings" means all drawings, calculations and technical information which are made available to the Service Provider for inspection at a venue and time to be announced by the Service Manager and any modifications thereof or additions thereto from time to time approved in writing by the Employer or delivered to the Service Provider by the Employer;*

1.1.13. *"Employer" means the contracting Party named in the Contract Data who appoints the Service Provider;*

1.1.14. *"Equipment" includes all appliances, tools implements, machinery, articles and things of whatsoever nature required in or for the rendering, completion or defects correction of the Services but does not include materials;*

1.1.15. *"Facilities" means the land and buildings, detailed in the Scope of Works, and any additions, or omission thereto, made available by the Employer for the purposes of the Contract, on, under, over, in or through which the Services are to be rendered or carried out;*

1.1.16. *"Form of Offer and Acceptance" means the written communication by the Employer to the Service Provider recording the acceptance of the Service Provider's offer;*

1.1.17. *"Identified Projects" means any projects, other than routine Services, identified and agreed to by the Parties during the Contract period or any extensions thereto, to be completed in terms of the Contract.*

1.1.18. *"Materials" includes all materials, commodities, articles and things required to be furnished under the Contract for the execution of the Services;*

1.1.19. *"Month" refers to the period commencing on a certain day of a month to the day preceding the corresponding day of the next month;*

1.1.20. *"Parties" means the Employer and the Service Provider;*

1.1.21. *"Pricing Data" means the document that contains the Bill of Quantities and provides the criteria and assumptions, which it will be assumed in the Contract were taken into account by the Service Provider when developing his prices;*

1.1.22. *"Services" means all the work to be performed by the Service Provider during the Contract Period in accordance with the Contract, as more fully set out in the Scope of Works, as amended from time to time by written agreement between the Parties;*

1.1.23. *"Service Provider" means the Tenderer, as named in the Contract Data, whose offer has been accepted by or on behalf of the Employer and, where applicable, includes the Service Provider's heirs, executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Employer, any assignee of the Service Provider;*

1.1.24. *"Service Manager" means the representative of the Employer named as the Service Manager in the Contract Data. The Employer reserves the right to replace the said Service Manager, by written notice to the Service Provider, without the need to furnish reasons therefor;*

1.1.25. *"Scope of Work" refers to the document which defines the Employer's objectives and requirements and specifications and any other requirements and constraints relating to the manner in which the Services must, or may, be provided or performed;*

1.1.26. *"Service Period" refers to the period indicated in the Contract Data during which the Service Provider shall render the Services required in terms of the Contract;*

1.1.27. *"Transitional Stage" refers to the period indicated in the Contract Data, which commences immediately on the expiry of the Service Period, and during which the Services to be provided by the Service Provider shall include, inter alia, the provision and transfer to the incoming service provider of managerial support and information, as detailed in the Scope of Works.*

2. *INTERPRETATION*

2.1. *In this Contract, except where the context otherwise requires:*

2.1.1 *The masculine includes the feminine and the neuter, vice versa;*

2.1.2 *The singular includes the plural; and vice versa*

2.1.3 *Any reference to a natural person includes a body corporate, firm, association or consortium/joint venture/partnership, vice versa.*

2.2. *The headings to the clauses of this Contract are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.*

2.3. *Words and phrases defined in any clause shall bear the meanings assigned thereto.*

2.4. *The various parts of the Contract are severable and may be interpreted as such.*

2.5. *The expressions listed in clause 1 bear the meanings as assigned thereto and cognate expressions bear corresponding meanings.*

2.6. *If any provision in a definition clause is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Contract, notwithstanding that it is only contained in the interpretation clause.*

3. *DURATION*

3.1. *The rights and obligations of the Parties to this Contract shall commence on the Commencement Date.*

3.2. *Subject to the terms of clauses 33 and 34 relating to breach and termination respectively, the Contract will commence on the Commencement Date and terminate on the expiry of the Contract Period, unless it is extended in terms of clause 3.3.*

3.3. *The terms or duration of the Contract may be extended as a result of bona fide negotiations between the Parties. No extension of term or duration of the Contract shall however be valid unless the terms and conditions of such extension has been reduced to writing and signed by the authorised representatives of both Parties.*

4. *RIGHTS AND OBLIGATIONS OF THE EMPLOYER*

4.1. *The Employer shall give access to or supply the Service Provider with:*

4.1.1 *All relevant, available data and information required and requested by the Service Provider for the proper execution of the Services; and*

4.1.2 *Such assistance as shall reasonably be required by the Service Provider for the execution of its duties under the Contract.*

5. *RIGHTS AND OBLIGATIONS OF THE SERVICE PROVIDER*

5.1. *The Service Provider shall, in executing his obligations, comply with the Service Manager's written instructions on any matter relating to the Services.*

5.2. *The Service Provider shall take instructions only from the Service Manager or other persons authorised by the Service Manager in terms of Clause 6.*

5.3. *The Service Provider shall not have the power of attorney or authority to enter into any contract or to otherwise bind or incur liability on behalf of the Employer, save where prior written authorisation has been obtained.*

5.4. *The Service Provider shall ensure that it, its employees, agents and representatives have the relevant experience and capacity necessary for rendering of the Services with the reasonable degree of skill, care and diligence that may be expected of professionals providing services similar to the Services.*

5.5. *Should any member of the Service Provider's team, in the opinion of the Service Manager or occupants of the Facilities, misconduct himself or is incompetent or negligent in the delivery of the Services, or whose presence on the Facilities is otherwise considered by the Service Manager, or occupants of the Facilities, on reasonable grounds, to be undesirable, the Employer may, in writing and together with reasons therefor, request that such person be removed. Such person shall not again be employed on the Services without the prior written consent of the Employer.*

5.6. *The Service Provider undertakes to effect such removal, as referred to in 5.5 above, within a day of receipt of the Employer's written request.*

5.7. *The Service Provider shall ensure that reasonable levels of care and responsibility are exercised when using items belonging to the Employer in the delivery of the Services.*

5.8. *During the ongoing provision of the Services the Service Provider shall at all times keep the Facilities clean and in a safe condition.*

5.9. *Notwithstanding anything herein contained to the contrary, it is specifically agreed that the appointment of the Service Provider shall not create an employment contract or relationship between the Parties and the Service Provider or his employees shall therefore not be entitled to any benefits to which the employees of the Employer may be entitled.*

6. *SERVICE MANAGER*

6.1. *The Service Manager shall administer the Contract on behalf of the Employer in accordance with the provisions of the Contract.*

6.2. *The Service Manager may delegate any of his powers and authority and may cancel such delegation, on the prior written notification thereof to the Service Provider.*

6.3. *Such delegation shall continue in force until the Service Manager notifies the Service Provider in writing that the delegation is terminated.*

6.4. *The Service Provider may at any time, prior to giving effect thereto, refer any written order or instruction of the Service Manager's delegatee to the Service Manager who shall confirm, reverse or vary such order or instruction.*

7. *SECURITY*

7.1. *The Service Provider shall provide to the Employer security in the amount and in the form set out in the Contract Data and any expenditure incurred in doing so shall be borne by the Service Provider.*

7.2. *Should the Service Provider fail to select the security to be provided or should the Service Provider fail to provide the Employer with the selected security within 21 days from Commencement Date, it shall be deemed that the Service Provider has selected a security in the form of a retention of 2.5 % of the Contract Sum (excl. VAT).*

8. *SECURITY CLEARANCE*

8.1. *In the event of security clearance becoming necessary, the Service Provider, any subcontractors and all human resources utilized by the Service Provider undertake to undergo security clearance, for which purpose the necessary forms will be made available to the Service Provider at the relevant time by the Employer. The Service Provider accepts that if he or any of his human resources refuses to undergo the required security clearance, they will not be allowed on the Facilities to render the Services.*

8.2. *It is required that all persons engaged in the rendering of the Services shall be easily identifiable and where required, security cleared.*

9. *CONFIDENTIALITY*

9.1. *The Service Provider undertakes to keep any and all information, of whatever nature, relating to the Contract or which he becomes privy to due to his presence at the Facilities, strictly confidential and such shall not be sold, traded, published or otherwise disclosed to anyone in*

any manner whatsoever, including by means of photocopy or other reproduction, without the Employer's prior written consent. As disclosure or improper use of the confidential information, without the Employer's prior written consent, will cause the Employer harm:

9.1.1 *the Service Provider shall be liable for any loss or damages suffered by the Employer and shall indemnify the Employer against any claims by third parties as a result of such unauthorised disclosure or use thereof , either in whole or in part; and/or*

9.2.1 *the Employer shall be entitled to cancel the Contract*

9.2. *The Service Provider shall be entitled to disclose such confidential information to the following persons, who have a clear need to know interest, in order to assist with the rendering of the Services on the Contract:*

9.2.1 *employees, officers and directors of the Service Provider; and*

9.2.2 *any professional consultant or agent retained by the Service Provider for the purpose of rendering the Services, provided that the identity of such consultant or agent is made known to the Employer in writing and the Employer acknowledges in writing that the confidential information may be disclosed to such person.*

9.3. *The Service Provider shall be responsible for ensuring that all persons to whom the confidential information is disclosed under this Contract shall keep such information confidential and shall not disclose or divulge the same to any unauthorised person.*

9.4. *The confidential information shall remain the property of the Employer and the Employer may demand the return or destruction thereof, at the cost of the Service Provider, at any time upon giving written notice to the Service Provider. Within ten (10) days of receipt of such notice, the Service Provider shall return all of the original confidential information and shall destroy all copies and reproductions (both written and electronic) in its possession or in the possession of persons to whom it was disclosed and furnish a certificate to the Employer stating as much.*

10. *AMBIGUITY IN DOCUMENTS*

10.1. *The several documents forming the Contract are to be taken as mutually explanatory of one another and any ambiguity in or discrepancy between them shall be explained and, if necessary, rectified by the Service Manager who shall thereupon issue to the Service Provider a written explanation giving details of the adjustments, if any, and a written instruction directing what Service, if any, is to be delivered.*

11. *INSURANCES*

11.1. *It is the responsibility of the Service Provider to assess his risks on this project and to ensure that he obtains and maintains the adequate insurances to cover such risks.*

12. *ACCESS TO THE FACILITIES AND COMMENCEMENT OF THE SERVICES*

12.1. *The Service Provider shall provide the Employer, within 21 days of the Commencement Date, with an acceptable health and safety plan and such other information required in terms of the Occupational Health and Safety Act (85 of 1993).*

12.2. *The Service Period shall commence 30 days from Commencement date, or on such other date as maybe specified in the Contract Data*

12.3. *Notwithstanding the provision of 12.2, the Service Provider shall be given access to the Facilities or portions thereof, only after the provision by the Service Provider of an acceptable health and safety plan and of security clearance being obtained in terms of Clauses 12.1 and 8.1 respectively.*

12.4. *The Service Provider shall be given access to the Facilities or portions thereof and shall render the Services in accordance with its programme, referred to in clause 13 or after the receipt by him of a written instruction to this effect.*

12.5. *If the Employer fails to give the Service Provider access to the facility or any portion thereof for any reason other than default by the Service Provider and the Service Provider suffers additional costs as a result thereof, the Service Provider shall be entitled to make a claim therefor provided that the Service Provider is able to prove his claim and that he has taken all reasonable steps to mitigate the additional costs.*

13. *PROGRAMME*

13.1. *The Service Provider shall deliver to the Service Manager within 14 days from Commencement Date, a realistic programme and a cash flow for the delivery of the Services. The programme shall describe and detail the order in which the Services are to be rendered and shall be subject to the approval of the Service Manager, which written approval shall not be unreasonably withheld.*

13.2. *The Service Provider shall, on receipt of a written request from the Service Manager, furnish the Employer with any documents or information, of whatever nature, in support of the programme and/or in relation to the manner in which the Services are to be rendered and/or the resources to be supplied and used in the rendering of the Services and/or progress of the various parts of the Contract; and/or a detailed cash flow forecast.*

13.3. *A programme and the cash flow forecast will be submitted in terms of 13.1 and reviewed quarterly or as circumstances may require.*

13.4. *Agreement to the programme by the Service Manager or any adjustment thereto will not alter the responsibilities of the Service Provider in terms of this Contract.*

14. *SUBCONTRACTING*

14.1. *The Service Provider may subcontract any part of the Services at its discretion. The subcontracts shall incorporate the applicable terms, conditions and requirements of this Contract.*

14.2. *Subcontracting by the Service Provider shall not be construed as relieving the Service Provider from any obligations under the Contract or imposing any liability on the Employer.*

15. *INTELLECTUAL PROPERTY RIGHTS INDEMNITY*

15.1. *The Service Provider undertakes to obtain the necessary consent from the proprietors or their licensees should the Service Provider make use of the intellectual property of any other person.*

15.2. *The Service Provider further indemnifies the Employer against any claim or action (including costs on an attorney and client scale) caused by or arising from the failure to obtain such consent.*

16. *COMPLIANCE WITH LEGISLATION*

16.1. *This clause applies to legislation emanating from national and provincial government as well as that of any local authorities in whose area of jurisdiction the Facilities fall and which have a bearing on the delivery of the Services and Facilities under this Contract.*

16.2. *All the applicable legislation, which does not specifically allow discretion in respect of compliance by the Employer, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary.*

16.3. *Should any applicable legislation allow discretion in respect of compliance by the Employer it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the Service Provider by the Service Manager.*

16.4. *The Service Provider shall in the provision of the Services comply with the provisions of, and give all notices and pay all fees, taxes, levies and other charges required to be given or paid in terms of any legislation or imposed by any other body or person. The Service Provider hereby indemnifies the Employer against any liability for any breach of the provision of this clause.*

16.5. *It is the responsibility of the Service Provider to obtain the consents, permissions and/or permits, referred to in Clause 16.4, in the provision of the Services.*

16.6. *The Service Provider shall not have a claim against the Employer, and the Employer shall not be liable to refund the Service Provider for any of the fees, taxes, levies and other charges referred to Clause 16.4.*

17. *REPORTING OF INCIDENTS*

17.1. *In addition to the above, the Service Provider shall, as soon as possible, notify the Employer in writing of any incidents at the Facilities, which resulted or could have resulted in damage to property or injury or death to persons.*

17.2. *The Service Provider shall verbally notify the Service Manager of any of the incidents referred to in 17.1 immediately after the occurrence thereof.*

17.3. *The Service Provider shall follow up the verbal notification referred to in 17.2 with a detailed written report on such incidents to the Service Manager within the time frame indicated by the Service Manager, but in any event within 48 hours of the incident.*

17.4. *The written report referred to in 17.3 shall provide for all incidents, which resulted in injury, death or damage to property.*

17.5. *The Service Provider shall notify the Employer immediately, on becoming aware of the Contract requiring him to undertake anything that is illegal or impossible*

18. *NUISANCE*

18.1. *The Service Provider shall deliver the Services in a manner that shall not cause unnecessary noise, nuisance, or hinder the normal activities in the Facilities.*

18.2. *The Service Provider hereby indemnifies the Employer against any liability arising out of the Service Provider's non-compliance with his obligations in terms of Clause 18.1.*

19. *MATERIALS, WORKMANSHIP AND EQUIPMENT*

19.1. *All Services delivered, and materials and workmanship shall comply with the requirements of this Contract, the manufacturer's specification; good industry practice and the Service Manager's written instructions and shall be suitable for the purpose intended.*

19.2. *The Service Provider shall, in accordance with the Scope of Works or if instructed by the Service Manager, carry out tests demonstrating the acceptability of the relevant Services provided, or the suitability of materials or equipment to be used.*

19.3. *The Service Provider shall provide all necessary assistance, labour, materials, testing equipment and instruments for the purpose of such tests to be performed by himself or, if so instructed by the Service Manager, for the purposes of tests to be performed by any other person.*

19.4. *All costs for tests carried out shall be deemed to be included in the Service Provider's prices*

19.5. *Copies of the reports on the tests referred to in Clause 19.2 shall be forwarded by the Service Provider to the Employer within 10 days of the tests being completed.*

20. *URGENT WORK*

20.1. *The Employer may, by itself or through another service provider, effect any remedial or other repair work which becomes necessary due to no act or omission on the part of the Service Provider.*

20.2. *If the remedial or repair work became necessary due to an act or omission on the part of the Service Provider, its employees, agents or representatives, the Service Provider shall effect such remedial or repair work at its own cost.*

20.3. *If the remedial or repair work is urgently necessary due to an act or omission on the part of the Service Provider, its employees, agents or representatives and the Service Provider refuses to or is not available or able to effect such remedial or repair work, the Employer may effect such remedial or repair work either by itself or through another service provider.*

20.4. *If the Employer effects the remedial or repair work in terms of 20.3, then the Employer may recover such costs, losses or damages from the Service Provider or by deducting the same from any amount still due under this Contract or under any other contract presently or hereafter existing between the Employer and the Service Provider and for this purpose all these contracts shall be considered one indivisible whole.*

21. *INDEMNIFICATIONS*

21.1. *The Service Provider shall be liable for and hereby indemnifies the Employer against any liability, claim, demand, loss, cost, damage, action, suits or legal proceedings whether arising in common law or by statute consequent upon:*

21.1.1 *personal injuries to or the death of any person arising out of, related to, occasioned by, attributed to, or in the cause of or caused by the rendering of the Services;*

21.1.2 *loss of or damage to any movable or immovable or personal property or property contiguous to the Facilities whether belonging to or under the control of the Employer or any other body or person arising out of, related to, occasioned by, attributed to, or in the cause of or caused by reason of the rendering of the Services;*

21.1.3 *any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by the Employer.*

21.2. *The Employer accepts liability for all acts or omissions of its employees, agents or representatives.*

22. *VARIATIONS*

22.1. *The Employer may at any time during the Contract Period, vary the Services by way of additions, omissions, or substitutions.*

22.2. *No variation by the Employer of whatever nature shall vitiate the Contract.*

22.3. *Any Services required by the Employer outside of the Services as referred to in the Scope of Works will be regarded as being Identified Projects and shall be dealt with under clause 23 and shall be executed as a variation order.*

22.4. *The Service Provider shall inform the Employer of any instructions that are deemed to be Additional Services prior to such instructions being executed.*

22.5. *Additional Services will only be executed by the Service Provider after receipt by him of a written instruction from the Service Manager.*

22.6. *If no prior written authorisation, as required in 22.5 above, has been obtained, the Employer shall not reimburse the Service Provider for the Additional Services so executed, and the Service Provider agrees that it shall not have a claim for payment for such Additional Services.*

22.7. *The Additional Services will be valued at the rates in the Pricing Data.*

23. *IDENTIFIED PROJECTS*

23.1. *The Service Provider shall inform the Employer of any instructions that are deemed to be Identified Projects prior to such instructions being executed.*

23.2. *The Employer is not obliged to engage the services of the Service Provider on Identified Projects. The Employer may, by itself, through another service provider or through the Service Provider effect the services/works under Identified Projects.*

23.3. *Identified Projects will only be executed by the Service Provider after receipt by him of a written instruction from the Service Manager.*

23.4. *If no prior written authorisation, as required in 23.3 above, has been obtained, the Employer shall not reimburse the Service Provider for the Identified Projects so executed, and the Service Provider agrees that it shall not have a claim for payment for such Identified Projects.*

23.5 In respect of the Identified Projects, the written instruction referred to in 23.3 shall:

(a) describe the services/works required to be executed by the Service Provider under the Identified Project;

(b) state the due commencement and completion dates of the relevant Identified Project;

(c) state the total cost of the relevant Identified Project as agreed to between the Parties; and

(d) any additional requirements, conditions of contract and/or restrictions, other than those already stated in the Contract, that will be applicable.

23.6 Within 14 days of receipt of the written instruction referred to in 23.5, the Service Provider shall furnish the Employer with a realistic programme and a cash flow for the relevant Identified Project as required in 13.

23.7 Where an Identified Project comprises services/works that are of the same or similar character executed under the same or similar conditions as those to which the rates in the Pricing Data apply, it shall be valued at such rates.

23.8 Where an Identified Project comprises services/works that are not of the same or similar character executed under the same or similar conditions as those to which the rates in the Pricing Data apply, it shall be valued at market related rates to be agreed to in writing between the Employer and the Service Provider and in advance of executing the Identified Project. Failing agreement, the rates applicable shall be as determined by the Employer.

23.9 If the Service Provider fails to complete the Identified Project by the completion date specified in the written instruction referred to in 23.3, then the Service Provider will be liable for a penalty, at the rate stated in the Contract Data, for every day that lapses from the due completion date of the relevant Identified Project to the date of the actual completion of such Identified Project.

23.10 If the Identified Projects are delayed by variations, omissions, additions, substitutions or organised work stoppages by any workman not due to any action on the part of the Service Provider, exceptionally inclement weather, any substantial increase in provisional quantities or any other cause beyond the Service Provider's control, including delays caused by the Employer, then the Service Provider shall be entitled to apply in writing within 21 days of the cause of delay arising to the Service Manager for extension of the due completion date of the relevant Identified Project stating the cause of delay and period of extension applied for.

23.11 If during the period for completion of the Identified Project or any extension thereof abnormal rainfall or wet conditions occur, the formula below shall be used to calculate separately the delay for each calendar month or part thereof. It shall be calculated each month during the period referred to herein above, or until the issue date of the certificate of completion for the relevant Identified Project, whichever is the shorter period. The delay calculated for a given month shall be used to determine the interim extension of time granted for the month. At the end of the applicable period referred to above, the aggregate of the monthly delays will be taken into account for the final determination of the total extension of time for the Contract:

$$V = \frac{(Nw - Nn) + (Rw - Rn)}{X}$$

V = Delays due to rain in calendar days in respect of the calendar month under consideration.

Nw = Actual number of days during the calendar month on which a rainfall of Y mm or more per day has been recorded

Rw = Actual rainfall in mm for the calendar month under consideration.

Nn = Average number of days in the relevant calendar month (as derived from existing rainfall records provided in the project specifications) on which a rainfall of Y mm or more per day has been recorded.

Rn = Average rainfall in mm for the calendar month, as derived from the rainfall records supplied in the project specifications.

X = 20, unless otherwise provided in the project specifications.

Y = 10, unless otherwise provided in the project specifications.

The total delay that will be taken into account for the determination of the total extension of time for the Contract shall be the algebraic sum of the monthly totals for the period under consideration. But if the grand total is negative, the time for completion shall not be reduced on account of abnormal rainfall. The total extension of time for any calendar month shall not exceed (Nc – Nn) calendar days, where Nc = number of days calendar days in the month under consideration

The factor (Nw – Nn) shall be considered to represent a fair allowance for variations from the average number of days during which rainfall equals or exceeds Y mm per day.

The factor (Rw – Rn) ÷ X shall be considered to represent a fair allowance for variations from the average for the number of days during which rainfall does not equal or exceed Y mm per day, but when wet conditions prevent or disrupt work.

This formula does not take into account any flood damage, which could cause further or concurrent delays and which should be treated separately in so far as extension of time is concerned.

Accurate rain gaugings shall be taken at a suitable point on the site daily at 08:00 unless otherwise agreed to by the Service Manager, and the Contractor shall, at his own expense,

take all necessary precautions to ensure that the rain gauges cannot be interfered with by unauthorized persons.

Information regarding existing rainfall records, if available from a suitable rainfall station near the site, will be supplied in the project specifications, together with calculations of rain delays for previous years in accordance with the above formula. The average of these delays will be regarded as normal rain delays which the Contractor shall accommodate in his programme, and for which no extension of time will be considered.

23.12 Upon receipt of such written application, referred to in 23.10, the Employer may in writing extend the due completion date of the relevant Identified Project by a period to be determined by the Employer or may refuse to extend the due completion date of the relevant Identified Project. The due completion date of an Identified Project may not be extended beyond the end of the Contract Period stated in the Contract Data.

23.13 Any decision given by the Employer, in terms of 23.12, shall be final and binding on the Parties.

23.14 Should the Service Provider fail to apply in writing for an extension of the due completion date of the relevant Identified Projects within the 21 days referred to in 23.10, or should the Employer not grant an extension of the due completion date then the due completion date stipulated in the relevant written instruction referred to in 23.5 shall not be extended nor the Service Provider exonerated from liability to pay the penalty stipulated in 23.9 or from specific performance of the service/works within the period in the relevant written instruction.

24. *SUSPENSION OF THE SERVICES*

24.1 The Service Provider shall, on the written order of the Service Manager, suspend the provision of the Services or any part thereof for such time or times and in such manner as the Service Manager shall order and shall, during such suspension, properly protect the Services so far as is necessary.

24.2 If the Service Provider is instructed in writing by the Service Manager to suspend any or all of the Services, the Service Provider shall re-schedule the relevant Services. For the duration of such suspension all penalties applicable to that Service will be waived. Should the Service Provider suffer any additional costs resulting from such suspension, the Service Provider shall be entitled to make a claim therefor provided that the Service Provider shall prove his claim and that he has taken all reasonable steps to mitigate the additional costs.

24.3 If the Service Provider is unable to render any of the Services for any reason other than an instruction by the Employer to suspend the Services in terms of clause 24.1, the Employer shall not be liable for any claim of whatever nature, including a claim for costs, by the Service Provider.

25. *PENALTY FOR NON-PERFORMANCE*

25.1 The Service Provider shall be liable for a performance deduction, if the Service Provider in rendering any of the Services required under the Scope of Works, as amended from time to time,

25.1.1 delays in performing any of the Services;

25.1.2 fails to perform any of the Services;

25.1.3 fails to perform any of the Services to the standard required in the Scope of Works, as amended from time to time.

25.2 The performance deduction shall be calculated in accordance with the formula detailed in the Scope of Works.

25.3 *The Service Provider shall not be liable for a performance deduction, if the Service Provider is unable to perform due to no fault of his own, his employees, agents or representatives.*

26. *PAYMENTS*

26.1 *The Service Manager will evaluate the Service Provider's performance on a monthly basis.*

26.2 *The Service Provider shall submit a monthly certificate taking into account the following:*

26.2.1 *the assessment of the Services rendered during the assessment month, including routine services, management fees, and services using call down rates;*

26.2.2 *adjustments in terms of the pricing data;*

26.2.3 *additional work rendered by the Service Provider;*

26.2.4 *CPAP adjustment where stated in the Contract Data; and*

26.2.5 *VAT. Vat will be indicated separately in all documents.*

26.3 *If the Service Provider elects a security of 2,5% retention, or a 1,25% cash and 1,25% retention, then 5% of all moneys (excl. VAT) in the monthly certificate assessed by the Service Manager as being due to the Service Provider will be retained until such time as the amount retained equals 2.5% or 1,25%, whichever is applicable, of the Contract Sum (excl. VAT)*

26.4 *The monthly certificate shall be supported by a detailed report substantiating the Services rendered at each Facility during the month under assessment.*

26.5 *The monthly certificate shall be assessed by the Service Manager. If the Service Manager agrees with the certificate, he will issue a statement within 14 days of the receipt of the certificate, taking into account inter alia the following:*

i. Deductions for penalties;
ii. Deductions for overpayments;
iii. Deductions for retention
iv. Deductions for damages.

26.6 *The Service Provider shall, on receipt of the statement referred to in 26.5, issue to the Employer a tax invoice in the amount reflected in the statement. The Employer shall effect payment to the Service Provider within 16 days of receipt of the tax invoice.*

26.7 *If the Service Manager does not agree with the certificate issued by the Service Provider in terms of Clause 26.2, the Service Manager shall within 14 days of receipt of the certificate, issue a statement in the amount to which the Service Manager agrees and shall give reasons for rejecting the balance of the claim indicated in the statement.*

26.8 *The Service Provider shall furnish the Employer with a tax invoice in the amount indicated in the statement referred to in Clause 26.7.*

26.9 *With regards to the claim in dispute, the Service Provider may, within 14 days of the Service Manager issuing the statement referred to in 26.7, submit a revised certificate or a justification for his claim or declare a dispute in terms of 34.*

26.10 *If it is later resolved that the amount in dispute or any part thereof is owing to the Service Provider, the Employer shall be liable for interest thereon from 30 days after the issue of the relevant monthly certificate referred to in 26.2 until the date of payment at the interest rate determined from time to time, by the Minister of Finance in terms of section 80 (1)(b) of the Public Finance Management Act, 1999 (Act 1 of 1999), as amended.*

26.11 All the work shall be evaluated in accordance with the provisions of the Pricing Data.

26.12 In assessing the quality of the work presented by the Service Provider, the Employer may enlist the assistance of third persons. In assessing the work the third person shall act reasonably. The selection of such third persons shall be in the absolute discretion of the Employer and the Service Provider shall abide by such selection.

26.13 Any and all extra costs incurred by the Service Provider, resulting from the Service Provider having to address and/or rectify queries arising from a claim submitted in respect of work done, shall be for the account of the Service Provider.

27. *RELEASE OF SECURITY*

27.1 If the Service Provider has furnished a security by way of a variable guarantee of 2.5% of the Contract Sum (excl. VAT), the security will be reduced and be released in accordance with the provisions of such variable guarantee.

27.2 If the Service Provider elects to furnish a security by way of a cash deposit of 2.5% of the Contract Sum (excl. VAT), then the security will be released as follows:

27.2.1 annually in equal portions, subject to 27.2.2 and 27.2.3;

27.2.2 95% of the last annual portion of retention shall be released within 30 days of the expiry of the Service Period;

27.2.3 the remaining retention shall be released within 30 days of the issue of the Certificate of Completion.

27.3 If the form of security selected is:

(a) a retention of 2.5% of the Contract Sum (excl. VAT); or
(b) a 1,25% cash deposit and a 1,25% retention of the Contract Sum (excl. VAT),

then security will only be released after the 2,5% or 1,25% retention respectively has been accumulated, as follows:

27.3.1 annually in equal portions, subject to 27.3.2 and 27.3.3;

27.3.2 95% of the last annual portion of retention shall be released within 30 days of the expiry of the Service Period;

27.3.3 the remaining retention shall be released within 30 days of the issue of the Certificate of Completion.

28. *OVERPAYMENTS*

28.1 If any overpayment of whatever nature is made to the Service Provider, the Service Provider shall be obliged to repay such amount to the Employer and the Employer shall be entitled to deduct such over payment from any amount due to the Service Provider, in respect of this Contract or any other contract, which the Employer may have with the Service Provider. The Employer shall be entitled to claim interest on any and all overpayments made to the Service Provider at the rate prescribed, from time to time, by the Minister of Finance in terms of section 80 (1)(b) of the Public Finance Management Act, 1999 (Act 1 of 1999), as amended.

29. *COMPLETION*

28.1 *At the expiry of the Service Period the Service Manager shall furnish the Service Provider with a written list of Employer's Assets and Data handed over at commencement of the Contract and accumulated during the Contract Period.*

29.2 *At the expiry of the Contract Period, the Service Manager shall issue to the Service Provider a Certificate of Completion.*

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

29.3.1 *The Guarantee shall be returned, if applicable.*

29.3.2 *The final cash deposit or retention, whichever is applicable, shall be reduced to zero.*

30. *ASSIGNMENT*

30.1 *The rights and obligations of the Parties in terms of this Contract shall not be ceded, assigned, delegated, or otherwise transferred, by either Party to any person outside of the Service Provider and the Employer, save with the prior written consent of the other Party.*

30.2 *Each Party warrants that he is acting as a principal and not as an agent of an undisclosed principal.*

31. *INDULGENCES*

31.2 *No extension of time, latitude or other indulgences which may be given or allowed by either Party to the other shall constitute a waiver or alteration of this Contract, or affect such Party's rights, or prevent such Party from strictly enforcing due compliance with each and every provision of this Contract.*

32. *OWNERSHIP AND PUBLICATION OF DOCUMENTS*

32.1 *The Employer will become the owner of the information, documents, advice, recommendations and reports collected, furnished and/or compiled by the Service Provider during the course of, and for the purposes of executing this Contract, all of which will be handed over to the Employer, unless otherwise stipulated in the Contract, within ten (10) days of request therefor, but in any event on the termination and/or cancellation of this Contract for whatever reason. The Service Provider relinquishes its retention or any other rights to which it may be entitled.*

32.2 *The copyright of all documents, recommendations and reports compiled by the Service Provider during the course of and for the purposes of finalising Services, and the Contract as a whole, will vest in the Employer, and may not be reproduced or distributed or made available to any person outside the Employer's service, or to any institution in any way, without the prior written consent of the Employer. The Employer shall have the right to use such material for any other purpose without the approval of, notification to or payment to the Service Provider.*

32.3 *The copyright of all electronic aids, software programmes etc. prepared or developed in terms of this Contract shall be vested in the Employer, who shall have the right to use such material for any other purpose without the approval of, information or payment to the Service Provider.*

32.4 *In case of the Service Provider providing documents or material to the Employer, the development of which has not been at the expense of the Employer, copyright shall not be vested in the Employer. The Service Provider shall be required to indicate to which documents and/or materials this provision applies.*

32.5 *The Service Provider hereby indemnifies the Employer against any action or claim that may be instituted against the Employer and for any damages suffered or legal costs (including costs on an attorney and client scale) incurred on the grounds of an alleged infringement of*

any copyright or any other intellectual property right in connection with the work outlined in this Contract.

32.6 *All information, documents, recommendations, programmes and reports collected or compiled must be regarded as confidential and may not be communicated or made available to any person outside the Employer's service and may not be published either during the currency of this Contract or after termination thereof without the prior written consent of the Employer.*

33. *BREACH OF CONTRACT*

33.1 *In the event of a breach by the Service Provider of any of the terms and conditions of this Contract, the Employer shall issue a notice of non- compliance requiring compliance within 10 (ten) days. In the event that the Service Provider fails to remedy such breach on expiry of the notice period, then the Employer shall without prejudice to any other rights that it may have, be entitled to exercise any or all of the following rights:*

33.1.1 *Enforce strict compliance with the terms and conditions of the Contract;*

33.1.2 *To terminate this Contract without prejudice to any other rights it may have;*

33.1.3 *To suspend further payments to the Service Provider;*

33.1.4 *To appoint other service providers to complete the execution of the Services, in which event the Service Provider shall be held liable for costs incurred in connection with and arising from the appointment of such a service provider as well as damages suffered.*

33.2 *The Service Provider agrees to, within ten (10) days of written request from the Employer, give access to and to make available all information, documents, programmes, advice, recommendations and reports collected, furnished and/or compiled by them to enable the Employer to assume responsibility for and the benefit of the project as a whole.*

33.3 *In the event of breach by the Employer of the terms and conditions of this Contract, and in the event of the Employer remaining in breach after ten (10) days' written notice calling for rectification of the breach, the Service Provider shall be entitled to:*

33.3.1 *enforce strict compliance with the terms and conditions of the Contract; or*

33.3.2 *terminate the Contract by delivering written notice to the Employer to that effect to the extent that such breach is of a material term of this Contract.*

34. *STOPPAGE AND/OR TERMINATION OF CONTRACT*

34.1 *The Employer reserves the right to terminate this Contract or temporarily stop the Services, or any part thereof, at any stage of completion.*

34.2 *The Employer shall have the right to terminate this Contract without prejudice to any of its rights upon the occurrence of any of the following acts:*

34.2.1 *on breach of this Contract by the Service Provider as stipulated in Clause 33;*

34.2.2 *on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the Employer in writing;*

34.2.3 *if the Service Provider receives a court order to be placed under judicial management or to commence liquidation proceedings that is not withdrawn or struck out within five (5) days;*

34.2.4 if the Service Provider informs the Employer that it intends to cease performing its obligations in terms of this Contract;

34.2.5 if the Service Provider informs the Employer that it is incapable of completing the Services as described; or

34.2.6 if in the opinion of the Employer the Service Provider acted dishonestly;

34.3 The Employer reserves the right to, even in the absence of breach or the events referred to in 34, terminate this Contract at any time, by giving one (1) calendar month written notice to the Service Provider.

34.4 Further, the Contract shall be considered as having been terminated:

34.4.1 where the Employer stops the Contract and/or the Project and instructions to resume or reinstate the Services are not issued within twelve (12) months of the instruction; or

34.4.2 if instructions, necessary for the Service Provider to continue with the Services after a stoppage instruction, are not received from the Employer within three (3) months after such instructions were requested by the Service Provider.

34.5 Should the Contract between the Employer and the Service Provider, or any part thereof, be terminated by either of the Parties due to reasons not attributed to the Service Provider:

34.5.1 The Service Provider will be remunerated for the appropriate portion of the Services satisfactorily completed, calculated in accordance with the agreed rates.

34.5.2 Invoices for work done shall be submitted to the Employer within three (3) months after the termination of the Contract, failing which the Employer will not be obliged to pay same.

34.5.3 The Service Provider shall not be entitled to advance a right of retention or any similar right if this Contract is terminated and specifically agrees to, within ten (10) days of written request from the Employer, give access to and to make available all information, documents, programmes, advice, recommendations and reports collected, furnished and/or compiled by them to enable the Employer to assume responsibility for and the benefit of the Contract as a whole.

35. *DISPUTE RESOLUTION*

35.1 In the event of a dispute, the Parties shall endeavour to resolve such dispute through negotiation, in good faith.

35.2 If the Parties fail to resolve a dispute through negotiation as mentioned in 35.1, within 14 days of a dispute being declared, the Parties may by written agreement refer the matter to mediation.

35.3 The mediator shall be a person agreed to by the Parties, failing agreement, the President: South African Facilities Management Institute shall nominate the mediator.

35.4 Whether or not mediation resolves the dispute and irrespective of the outcome of thereof, the Parties shall bear their own costs arising from the mediation and shall equally share the costs of the mediator and related costs. The mediator and the Parties shall, before the commencement of the mediation, agree on a scale of fees on which the mediator's fees will be based.

35.5 The Parties shall appoint the mediator within 21 days of agreeing to mediate.

35.6 *On appointment of the mediator, the Parties shall jointly with the mediator decide on the procedure to be followed, representation, dates and venue for the mediation.*

35.7 *If the dispute or any part thereof is settled, the agreement shall be recorded by the mediator and signed by both Parties. The agreement shall be binding on the Parties to the extent that it correctly records the issues agreed upon between the Parties.*

35.8 *If the dispute or any part thereof remains unresolved, it may be resolved by litigation proceedings.*

35.9 *If the mediator or any Party, at any time during the mediation process, is of the opinion that the mediation will not resolve the dispute, then he may in writing stop the mediation process. The dispute may then be dealt with in terms of 35.8.*

35.10 *Notwithstanding anything else herein contained to the contrary, it is agreed that irrespective of the fact that the dispute is referred to negotiation, mediation or litigation in court, the decision of the Employer on the dispute involved will immediately be given effect to by the Service Provider and the Service Provider shall proceed with the Services with all diligence unless the Parties agree otherwise in writing.*

36. *GENERAL*

36.1 *This is the entire Contract between the Parties and may only be amended if reduced to writing and signed by the duly authorised representatives of both Parties, whereafter such amendments will take effect.*

36.2 *The Contract shall be governed by, construed and interpreted according to the law of the Republic of South Africa.*

37. *DOMICILIUM CITANDI ET EXECUTANDI*

37.1 *The domicilium citandi et executandi of the Parties for all purposes arising from this Contract for the service of notices and legal process shall be as specified by the Parities in the Contract Data.*

37.2 *Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its domicilium citandi et executandi to another physical address.*

37.3 *Any notice in terms of the conditions of the Agreement must either be:*

37.3.1 *delivered by hand during normal business hours of the recipient; or*

37.3.2 *sent by prepaid registered post to the address chosen by the addressee.*

37.4 *A notice in terms of the provisions of this Agreement shall be considered to be duly received:*

37.4.1 *if hand-delivered on the date of delivery;*

37.4.2 *if sent by registered post as indicated in clause 37.3.2 above, ten (10) days after the date it was posted, unless the contrary is proved.*

37.5 *Notwithstanding anything to the contrary contained or implied in this Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.*

37.6 *Any notice, request, consent, or other communication made between the Parties pursuant to the Contract shall be in writing and 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 day after being sent by facsimile to such Party at the number specified in the Contract Data or one week after being sent by registered post to the addressee specified in the Contract Data.*