

# STANDARD PROFESSIONAL SERVICES CONTRACT

110060



(July 2009)  
(Third Edition of CIDB document 1014)



**PROJECT:** THE INSTALLATION OF 7,576 WATER METERS IN  
SENEKAL/MATWABENG (MIG/FS0793/W/10/11)

**CLIENT:** SETSOTO LOCAL MUNICIPALITY

**CONSULTANT:** ISA & PARTNERS (PTY) LTD  
CONSULTING ENGINEERS AND PROJECT MANAGERS

**SERVICE:** DESIGN AND CONSTRUCTION SUPERVISION FOR THE  
INSTALLATION OF 7,576 WATER METERS IN  
SENEKAL/MATWABENG

**AGREEMENT DATE:** .....  
(Refer to C1-1)

**REFERENCE:** .....

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## PREFACE

The Standard Professional Services Contract has been prepared for use by Employers when they engage firms or individuals (Service Providers) for the performance of knowledge-based expertise provided on the basis of trust.

This document is intended to be used with the procurement documents prepared in accordance with the provisions of SANS 10403: Formatting and Compilation of Construction Procurement Documents

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# GENERAL CONDITIONS OF CONTRACT

## 1. DEFINITION

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

### **Contract**

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

### **Contract Data**

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

### **Contract Price**

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

### **Day**

A calendar day.

### **Defect**

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

### **Deliverable**

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

### **Employer**

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

### **Force Majeure**

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

### **Key Persons**

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

### **Others**

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

### **Parties**

The Employer and the Service Provider.

### **Period of Performance**

The period within which the Services are to be performed and completed, commencing from the Start Date.

### **Personnel**

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

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**Personnel Schedule**

A schedule naming all Personnel and Key Persons.

**Pricing Data**

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

**Project**

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

**Scope of Work**

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

**Service Provider**

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

**Services**

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

**Start date**

The date on which the Services are to commence, as stated in the Contract Data

**Subcontractor**

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

**2. INTERPRETATION**

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

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

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

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

**3. GENERAL**

**3.1 Governing law**

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

**3.2 Change in legislation**

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and

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time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both).

### **3.3 Language**

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

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

### **3.4 Notices**

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

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

### **3.5 Location**

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

### **3.6 Publicity and publication**

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

### **3.7 Confidentiality**

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

### **3.8 Variations**

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

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

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

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### **3.9 Changes to the Contract Price or Period of Performance**

3.9.1 The Service provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:

- (a) a change in legislation takes place in accordance with the provisions of Clause 3.2;
- (b) a variation to the Services is made in accordance with the provisions of Clause 3.8;
- (c) the Employer or Others do not perform an action, provide access to people, places or things or perform work in accordance with the programme (see Clause 3.15);
- (d) the contract is suspended in accordance with the provisions of Clause 8.5;
- (e) the contract is restarted following a suspension; or
- (f) an event occurs which neither Party could prevent and which prevents the Service Provider from completing the Services or a part thereof.

3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.

3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.

3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.

### **3.10 Sole agreement**

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

### **3.11 Indemnification**

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

### **3.12 Penalty**

3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, he may after giving notice to the Service Provider:

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

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### 3.13 Equipment and materials furnished by the Employer

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

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

### 3.14 Illegal and impossible requirements

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

### 3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) provisions for float;
- d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) other information as required in terms of the Scope of Work or Contract Data.

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

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.4 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer

and submit such revised programme to the Employer for approval.

### 3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

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3.16.2 The adjustment to the time-based fees shall be equal to:

$$(CPI_n - CPI_s) / CPI_s$$

Where  $CPI_s$  = the indices specified in the Contract Data during the month in which the start date falls

$CPI_n$  = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls

#### **4. EMPLOYER'S OBLIGATIONS**

##### **4.1 Information**

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

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

##### **4.2 Decisions**

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

##### **4.3 Assistance**

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

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

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

##### **4.4 Services of Others**

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

##### **4.5 Notification of material change or defect**

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

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

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#### **4.6 Issue of instructions**

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

#### **4.7 Payment of Service Provider**

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

### **5. SERVICE PROVIDER'S OBLIGATIONS**

#### **5.1 General**

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

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

#### **5.2 Exercise of authority**

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

#### **5.3 Designated representative**

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

#### **5.4 Insurances to be taken out by the Service Provider**

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

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

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

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

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

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## **5.6 Co-operation with Others**

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

## **5.7 Notice of change by Service Provider**

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

## **6. CONFLICTS OF INTEREST**

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

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

### **6.2 Royalties and the like**

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

### **6.3 Independence**

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

## **7. SERVICE PROVIDER'S PERSONNEL**

### **7.1 General**

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

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

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

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

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

## 7.2 Provision of Personnel in terms of a Personnel Schedule

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

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

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

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

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

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

### 8.1 Commencement of Services

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

### 8.2 Completion

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

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

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

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

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- 7.1.1 deliver to the Employer full and detailed particulars of the request.
- 8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.
- 8.3 Force Majeure**
- 8.3.1 The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.
- 8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.
- 8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.
- 8.4 Termination**
- 8.4.1 The Employer may terminate the Contract:
- where the Services are no longer required;
  - where the funding for the Services is no longer available;
  - if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
  - if the Service Provider becomes insolvent or liquidated; or
  - if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;
- 8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).
- 8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:
- if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
  - if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
  - when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
  - if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

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

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

## 8.5 Suspension

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

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

## 8.6 Rights and liabilities of the Parties

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

## 9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

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

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

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

## 10. SUCCESSION AND ASSIGNMENT

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

10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider

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- transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
- (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
  - (b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.
- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.


## 11. SUBCONTRACTING

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be subcontracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.
- 11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.
- 11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.
- 11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

## 12. RESOLUTION OF DISPUTES

### 12.1 Settlement

- 12.1.1 The Parties shall negotiate in

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### 3.13 Equipment and materials furnished by the Employer

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

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

### 3.14 Illegal and impossible requirements

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

### 3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) provisions for float;
- d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) other information as required in terms of the Scope of Work or Contract Data.

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

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.4 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer

and submit such revised programme to the Employer for approval.

### 3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

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3.16.2 The adjustment to the time-based fees shall be equal to:

$$(CPI_n - CPI_s) / CPI_s$$

Where  $CPI_s$  = the indices specified in the Contract Data during the month in which the start date falls

$CPI_n$  = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls

## 4. EMPLOYER'S OBLIGATIONS

### 4.1 Information

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

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

### 4.2 Decisions

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

### 4.3 Assistance

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

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

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

### 4.4 Services of Others

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

### 4.5 Notification of material change or defect

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

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

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#### 4.6 Issue of instructions

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

#### 4.7 Payment of Service Provider

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

### 5. SERVICE PROVIDER'S OBLIGATIONS

#### 5.1 General

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

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

#### 5.2 Exercise of authority

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

#### 5.3 Designated representative

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

#### 5.4 Insurances to be taken out by the Service Provider

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

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

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

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

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

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## **5.6 Co-operation with Others**

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

## **5.7 Notice of change by Service Provider**

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

## **6. CONFLICTS OF INTEREST**

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

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

### **6.2 Royalties and the like**

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

### **6.3 Independence**

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

## **7. SERVICE PROVIDER'S PERSONNEL**

### **7.1 General**

- 7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.
- 7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.
- 7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.
- 7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

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

## 7.2 Provision of Personnel in terms of a Personnel Schedule

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

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

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

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

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

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

### 8.1 Commencement of Services

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

### 8.2 Completion

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

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

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

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

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deliver to the Employer full and detailed particulars of the request.

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

### 8.3 Force Majeure

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

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

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

### 8.4 Termination

8.4.1 The Employer may terminate the Contract:

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

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

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

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

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

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

## 8.5 Suspension

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

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

## 8.6 Rights and liabilities of the Parties

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

## 9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

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

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

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

## 10. SUCCESSION AND ASSIGNMENT

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

10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider

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transfers his rights and obligations under the Contract, or part thereof, to others.

10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

- (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or
- (b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

## 11. SUBCONTRACTING

11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.

11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.

11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be subcontracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.

11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.

11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

## 12. RESOLUTION OF DISPUTES

### 12.1 Settlement

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of

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or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

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

## 12.2 Mediation

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

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

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

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

## 12.3 Adjudication

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

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

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

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

## 12.4 Arbitration

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

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

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### 13. LIABILITY

#### 13.1 Liability of the Service Provider

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

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

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

#### 13.2 Liability of the Employer

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

#### 13.3 Compensation

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

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

#### 13.4 Duration of Liability

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

#### 13.5 Limit of Compensation

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

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

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

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

### 13.6 Indemnity by the Employer

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

### 13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
- b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

## 14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

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

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.

14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.

14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for

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time charges and expenses by attending during normal working hours at the office where the records are maintained.

**15. AMOUNTS DUE TO THE EMPLOYER**

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

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

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# C1. CONTRACT DATA

The Conditions of Contract are the *Standard Professional Services Contract (July 2009)* published by the Construction Industry Development Board.

Each item of data given below is cross-referenced to the clause in the Conditions of Contract to which it mainly applies.

## Part 1: Data provided by the Employer

Clause		Guidance notes
	The Employer is the <b>Setsoto Local Municipality</b>	
3.4 and 4.3.2	The authorised and designated representative of the Employer is: <b>Municipal Manager</b> Name: <b>BJ Mthembu</b>	
	The address for receipt of communications is: Telephone: <b>051 933 9302</b> Facsimile: <b>051 933 9363</b> E-mail: <b>manager@setsoto.co.za</b> Address: <b>27 Voortrekker Street</b> <b>Ficksburg</b> <b>9730</b>	
1	The Project is the <b>Installation of 7,576 Water Meters in Senekal/Matwabeng</b>	
1	The Period of Performance is - <b>Until project completion</b>	<i>Not required if the Service Provider is required to complete this item.</i>
1	The Start Date is <b>18 November 2009</b>	<i>Insert the date on which Services are to commence.</i>
3.4.1	Communications by e-mail / facsimile <b>is permitted</b>	<i>Omit is permitted. Delete that which is not applicable.</i>
3.5	The location for the performance of the Project is <b>Senekal and Meqheleng</b>	<i>Omit is not required</i>
3.6	The Service Provider may not release public or media statements or publish material related to the Services or Project under any circumstances.	<i>Omit if standard provisions in clause 3.6 are to apply.</i>
3.9.2	The time-based fees used to determine changes to the Contract Price are as stated in the Pricing Data.	<i>Omit if time-based charges are to be negotiated.</i>
3.12	The penalty payable is <b>Nil</b> per Day subject to a maximum amount of <b>Nil</b> .	

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3.15.1	The programme shall be submitted within <b>14 Days</b> of the award of the Contract.	<i>Not required if programme is to be submitted with the tender.</i>
3.15.2	The Service Provider shall update the programme at intervals not exceeding <b>8 weeks</b> .	<i>Insert number of weeks e.g. 5, if require more frequently than once a quarter.</i>
3.16	The time-based fees where applicable shall be adjusted for inflation in line with the latest applicable Guideline Scope of services and Tariff of Fees.	<i>Omit if the default provisions are appropriate.</i>
13.16.1	The indices are those contained in Table A of P0141 Consumer Price Index for the CPI for all services published by Statistics South Africa.	<i>Omit if no adjustment is to be made for inflation. Amend if necessary.</i>
4.2	A reasonable time for the Employer to give his decision is a period not exceeding <b>3 weeks</b> .	
4.3.1(d)	The Service Provider is required to assist in the obtaining of approvals, licenses and permits from the state, regional and municipal authorities having jurisdiction over the Project.	<i>Omit if the Service Provider is required to do so. Reword as necessary</i>
5.4.1	The Service Provider is required to provide Professional Indemnity cover as set out in the Professional Indemnity Schedule with a minimum value of R 2 million per claim. <b>Refer to the attached Professional Indemnity Certificate.</b>	<i>State requirements for professional indemnity insurance, if any</i>
	The Service Provider is required to provide the following additional insurances: <b>N/A</b>	<i>State requirements for other insurances if required.</i>
5.5	The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions: 1 <b>N/A</b> 2 <b>N/A</b>	
7.2	The Service Provider is required to provide personnel in accordance with the provisions of clause 7.2 and to complete the Personnel Schedule.	<i>Omit if this is not a requirement.</i>
8.1	The Service Provider is to commence the performance of the Services within <b>14 Days</b> of date that the Contract becomes effective.	<i>Insert number of day or amend as appropriate.</i>
8.2.1	The Contract is concluded when the project is completed ( <b>Completion Report Issued</b> )	<i>Omit if standard provisions of Clause 8.2.1 are appropriate.</i>
8.4.3 (c)	The period of suspension under clause 8.5 is not to exceed <b>3 months</b>	<i>State maximum period for suspension.</i>

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9.1	Copyright of documents prepared for the Project shall be vested with the <b>Setsoto Local Municipality</b>	<i>Enter Employer or Service Provider</i>
11.1	A Service Provider may not subcontract any work which he has the skill and competency to perform.	<i>Omit if not permitted</i>
12.1	Interim settlement of disputes is to be by <b>mediation</b> . The mediator will be selected by agreement between the parties or failing such agreement within 7 days by a nominee of the President of the South African Institution of Civil Engineering.	<i>Delete the option that is not selected</i>
12.2.4	Final settlement is by <b>arbitration</b>	<i>Delete the option that is not selected</i>
12.4.2	The Arbitrator is the person appointed by agreement between the parties or failing such agreement within 7 days by a nominee of the President of the Association of Arbitrators of Southern Africa. The Arbitrator must be registered with the Association of Arbitrators of Southern Africa (Tel No. 011 884 9164/5, Fax No. 011 884 9167)	<i>Insert particulars of person who appoints</i>
13.1.3	All persons in a joint venture or consortium shall carry a minimum professional indemnity insurance of <b>R 5 million</b>	<i>Delete if not a requirement or amend wording as required.</i>
13.4	Neither the Employer nor the Service Provider is liable for any loss or damage resulting from any occurrence unless a claim is formally made within <b>12 months</b> from the date of termination or completion of the Contract.	<i>Not required if the standard provisions of Clause 13.4 are acceptable.</i>
15	The interest rate will be prime interest rate of the Employers bank at the time that the amount is due. Or the interest rates will be the applicable interest rate of the Employer's bank at the time of the claim.	<i>Describe interest payable. Amend wording as applicable.</i>
	The additional conditions of contract are: <b>Refer to the Schedule of Deviations, Item 1 – Supervision and Monitoring</b>	<i>Insert additional conditions of contract or delete row:</i>

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## Part 2: Data provided by the Service Provider

Clause		<i>Guidance notes</i>
1	<p>The Service Provider is <b>ISA &amp; Partners (Pty) Ltd</b></p> <p>Address: <b>66 Nyala Street, Doorn, Welkom, 9459</b></p> <p>Telephone: <b>057 352 4099</b></p> <p>Faxsimile: <b>057 352 6116</b></p>	
5.3	<p>The authorised and designated representative of the Service Provider is:</p> <p>Name: <b>CN Kimaru Pr. Eng.</b></p>	
12.4.2	<p>The address for receipt of communications is:</p> <p>Telephone: <b>057 352 4099</b></p> <p>Faxsimile: <b>057 352 6116</b></p> <p>Address: <b>66 Nyala Street, Doorn, Welkom, 9459</b></p>	
1	<p>The Period of Performance is <b>until the project is completed.</b></p>	<i>Omit if employer specifies Period of Performance</i>
5.5 7.1.2	<p>The Key Persons and their jobs / functions in relation to the services are: <b>Refer to the attached Personnel schedule.</b></p>	<i>Provide if a requirement</i>

  
  
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## Form of offer and acceptance

### Offer

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

### DESIGN AND CONSTRUCTION SUPERVISION SERVICES FOR THE INSTALLATION OF 7,576 WATER METERS IN SENEKAL/MATWABENG

Telephone: 057 832 4034

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.

S.3

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

Telephone: 057 832 4034


Facsimile: 057 832 4034

### The offered total of the Prices inclusive of Value Added Tax is

**Eight Hundred and Thirty Six Thousand, Three Hundred and Fifty Nine Rand and Sixty One Cents** (in words); **R 836,359.61** (in figures).

This offer may be accepted by the Employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the validity period 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.

Signature (s)

C N KIMARU 

Name (s)

C N KIMARU *Pr Eng*

Capacity

DIRECTOR

for the

tenderer

ISA & PARTNERS (PTY) LTD

(Name and address of organization)

Name and signature of witness

MORETLO LEPIKOE 

Date

2/5/2011

### 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

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agreement and in the contract that is the subject of this agreement.

The term of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 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 deviation attached to and forming part of this agreement.

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 fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Service Provider) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.<sup>1</sup>

Signature(s) [Signature]  
 Name(s) B. J. MTHEMBU  
 Capacity MUN. MANAGER  
 for the Employer SETSOTO LOCAL MUNICIPALITY, FICKSBURG  
 (Name and address of organization)  
 Name and signature of witness MORETLO LEPTIKOE [Signature] DATE 03/05/2011

<sup>1</sup> As an alternative, the following wording may be used:  
 Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the employer of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery / door-to-door delivery / courier service (delete that which is not applicable), 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 this agreement shall constitute a binding contract between the parties.

[Handwritten Signature]  
[Handwritten Initials]

Schedule of Deviations

Notes:

- 1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender
- 2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
- 3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
- a4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject: **Supervision and Monitoring**

Details: **Notwithstanding the provisions of Clause 5 the Standard Professional Services Contract and any other contractual duty imposed on the Consultants in terms of contract documents, the Client undertakes to exhaust all its contractual remedies against the Contractor, before exercising any contractual rights of recourse it may have against the Consultant in the event of the Client suffering any damages as a result of any breach by the Contractor of his obligations in terms of the contract documents."**

2 Subject \_\_\_\_\_

Details \_\_\_\_\_

3 Subject \_\_\_\_\_

Details \_\_\_\_\_

4 Subject \_\_\_\_\_

Details \_\_\_\_\_

By the duly authorised representative 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.

*Handwritten signatures and initials: "Mune", "TRZ", and a signature.*

**PART C2 - PRICING DATA**



**C2.1 - PROFESSIONAL FEES**

The professional fees are based on the latest applicable Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000)

**PROFESSIONAL FEES, SITE SUPERVISION AND DISBURSEMENT COSTS CALCULATION**

ACCOUNT FOR PROFESSIONAL FEES (Basic Fees - Gazette No. 33892 of 23 December 2010)					
Project Value excludes VAT: (Cost of the works)					<b>R 6,210,800.00</b>
Project Range	Primary Fee	% Part on Balance	Balance Amt	% Part Fees	Amount
R490,000 < CW < R1,225,000	R 61,250.00	12.50%			
R1,225,000 < CW < R6,000,000	R 153,125.00	10.00%			
R6,000,000 < CW < R12,250,000	R 630,625.00	9.00%	R 210,800.00	9.00	R 18,972.00
R12,250,000 < CW < R30,500,000	R 1,193,125.00	8.00%			
R30,500,000 < CW < R61,250,000	R 2,653,125.00	6.00%			
R61,250,000 < CW < R367,500,000	R 4,498,125.00	5.50%			
> 367,500,000	R 21,341,875.00	5.00%			
<b>BASIC FEE FOR CIVIL AND STRUCTURAL ENGINEERING WORK</b>				(Clause 3.2.1(1))	<b>R 487,197.75</b>
CATEGORY FACTORS WORK OF NORMAL CHARACTER					
Alteration to existing Works			(Clause 3.2.1 (4)) Multiply by	1.25	R 0.00
Application of Targeted Procurement Clause			(Clause 3.2.1 (4)) Multiply by	1.07	R 0.00
Disbursements (Topo survey, EIA study, Geotechnical Tests e.t.c)					R 46,451.03
Site Supervision Costs (approximately 6 months)					R 200,000.00
<b>SUB-TOTAL</b>					<b>R 733,648.78</b>
V.A.T @ 14%					R 102,710.83
<b>GRAND TOTAL</b>					<b>R 836,359.61</b>

**C2.2 - SITE SUPERVISION COSTS**

The site supervision costs will consist of the costs of providing full time staff on site (Level 4 Construction Monitoring) commensurate with the requirements of the project. The costs will include salaries, travelling costs and other disbursements as relevant utilising the latest disbursement schedules issued by the Department of Public Works.

Typical monthly site supervision and disbursement costs for this project will be approximately **R 60,000.00/month**.

**C2.3 - INDICATIVE TIME BASED FEE RATES**

The indicative time based fee rates below are based on the latest applicable Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000). These will be utilised if the Employer requests additional work to be done that was not covered by the original scope of work.

TITLE	Rate/hour
DIRECTOR	R 1,500.00
SENIOR ENGINEER/PROJECT MANAGER	R 1,200.00
ENGINEER	R 900.00
DESIGN TECHNICIAN	R 750.00
SENIOR TECHNICIAN / ENGINEER'S REPRESENTATIVE	R 750.00
ASS.ENGINEER'S REPRESENTATIVE / CLERK OF WORKS	R 600.00
CAD/GIS OPERATOR	R 450.00

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## Part C3 – SCOPE OF WORK

The Scope of Work for this project will be based primarily (but not exclusively) on the latest applicable Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000). The latest applicable guideline will be Government Gazette No 28774, 13 April 2006.

### C3.1 Normal Services (Clause 2.1)

The services required from the Service Provider will be those necessary to conclude the following stages:

- i) Report stage;
- ii) Preliminary Design Stage;
- iii) Design and Tender Stage;
- iv) Working Drawing Stage;
- v) Construction Stage;
- vi) Targeted Procurement.

### C3.2 Additional Services pertaining to all stages of the project (Clause 2.2.1)

The following services are additional to the normal services provided by the Service Provider:

- i) Enquiries not directly concerned with the **works** and its subsequent utilisation;
- ii) Valuation for purchase, sale or leasing of plant, equipment, material, systems, land or buildings or arranging for such valuation;
- iii) Making arrangements for way leaves, servitudes or expropriations;
- iv) Negotiating and arranging for the provision or diversion of services not forming part of the **works**;
- v) Additional work in obtaining the formal approval of the appropriate Government Departments or Public Authorities, including the making of such revisions as may be required as a result of decisions of such Departments or Authorities arising out of changes in policy, undue delay, or other causes beyond the **consulting engineer's** control;
- vi) Surveys, analyses, tests and site or foundation or other investigations, model tests, laboratory tests and analyses carried out on behalf of the **client**;
- vii) Setting out or staking out the **works** and indicating any boundary beacons and other reference marks;
- viii) Preparation of drawings for manufacture and installation or detailed checking of such for erection or installation fit.
- ix) Detailed inspection, reviewing and checking of designs and drawings not prepared by the **consulting engineer** and submitted by any **contractor** or potential **contractor** as alternative to those embodied in tender or similar documents prepared by the **consulting engineer**;
- x) Inspection and testing, other than on site, of materials and plant, including inspection and testing during manufacture;
- xi) Preparing and setting out particulars and calculations in a form required by any relevant authority;
- xii) Abnormal additional services by or costs to the **consulting engineer** due to the failure of a **contractor** or others to perform their required duties adequately and timely;
- xiii) Executing or arranging for the periodic monitoring and adjustment of the **works**, after final handover and completion of construction and commissioning, in order to optimise or maintain proper functioning of any process or system;
- xiv) Investigating or reporting on tariffs or charges leviable by or to the client;
- xv) Advance ordering or reservation of materials and obtaining licenses and permits;
- xvi) Preparing detailed operating, operation and maintenance manuals;

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## Part C3 – SCOPE OF WORK

- xvii) Additional **services**, duties and/or work resulting from project scope changes, alterations and/or instructions by the **client**, or his duly authorized agents, requiring the **consulting engineer** to advise upon, review, adapt and/or alter his completed designs and/or any other documentation and/or change the scope of his **services** and/or duties. Such additional **services** are subject to agreement in writing between the **consulting engineer** and the **client** prior to the execution thereof;
- xviii) Exceptional arrangements, communication, facilitation and agreements with any stakeholders other than the **client** and **contractors** appointed for the **works** on which the **consulting engineer** provides **services**;
- xix) Any other additional **services**, of whatever nature, specifically agreed to in writing between the **consulting engineer** and the **client**.

### C3.3 Construction Monitoring (Clause 2.2.2)

The duties of the **consulting engineer** for the **construction monitoring (Level 4)** are as follows:

The **construction monitoring staff** shall:-

- i) Maintain a full time presence on site to constantly review –
  - (a) Work procedures;
  - (b) Construction materialsfor compliance with the requirements of the plans and specifications and review completed work prior to enclosure or on completion as appropriate;
- ii) Where the **consulting engineer** is the sole consultant or principal agent, carry out such administration of the **project** as is necessary on behalf of the **client**;
- iii) Be available to provide the **contractor** with technical interpretation of the plans and specifications;
- iv) Implement an appropriate Quality Assurance System to ensure that the works are constructed to acceptable standards.

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## PART C4 - OTHER RELEVANT DOCUMENTATION

The following additional documents are considered relevant and form part of this contract agreement.

Some of these documents are of historical significance in the development of the Employer's requirements to ISA and Partners Consulting Engineers since 2006.

- 1) Professional Indemnity Certificate;
- 2) Technical Report for the Installation of 7,576 Water Meters for Senekal/Matwabeng (June 2010);

### CONCLUSION

The above information is provided for your information and is not intended to constitute an offer.

The information is provided for your information.

Maintain a full and complete record of all documents and information received in connection with this contract.

Ensure that all documents and information are stored in a secure and accessible manner.

Ensure that all documents and information are kept up to date and accurate.

Ensure that all documents and information are protected from unauthorized access.

Ensure that all documents and information are destroyed in a secure and confidential manner.

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The following is a list of documents that are required to be submitted with the bid.

Submit a copy of the following documents with your bid:

1. A letter of indemnity (see below)
2. Technical proposal for the project (see ENR C4.1.1.1)



## PART C4.1

### Professional Indemnity and CESA Certificates

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[Signature]



**GLENRAND M.I.B**  
RISK SERVICES

20 October 2010

**TO WHOM IT MAY CONCERN:**

Our ref: Terry Botha  
Direct Line: 051 448 1795

Dear Sir/Madam

**PROFESSIONAL INDEMNITY INSURANCE**  
**ISA & PARTNERS (PTY) LTD – CONSULTING ENGINEERS & PROJECT MANAGERS**

This letter serves to confirm that we have placed Professional Indemnity Insurance Policies on behalf of the above-mentioned Client for the past number of years.

We also confirm that the following Insurance Policy in place

- Limit of Indemnity : R10 000 000,00 each and every claim
- Period of Insurance : 01 August 2010 to 31 July 2011
- Insurers : Santam Insurance Company Limited
- Policy number : P05382

We confirm that the policy is currently of full force and effect.

Yours faithfully

**GLENRAND M.I.B PROFESSIONAL SERVICES**

Risk Services, a division of Glenrand M.I.B Ltd. Reg. No. 1997/008001/06  
Glenrand M.I.B is a Licensed Financial Services Provider No: 11228  
Tel +27 51 447 4739 | Fax +27 51 447 0119 | Email [infobfn@glenrandmib.co.za](mailto:infobfn@glenrandmib.co.za) | Web [www.glenrandmib.co.za](http://www.glenrandmib.co.za)  
Docex: 8 Bloemfontein | 1<sup>st</sup> Floor, 160 Zastron Street, Westdene, Bloemfontein, 9301  
PO Box 12470, Brandhof, 9324, South Africa

Directors: Dr MF Kunene<sup>1</sup> (Chairman), AJ Chislett (Chief Executive Officer), BA Chelius<sup>1</sup> (Alt), RG Cottrell<sup>2</sup>,  
AP du Preez<sup>1</sup>, HH Hickey<sup>2</sup>, TT Khobane<sup>1</sup> (Alt), MR Mashishi<sup>1</sup>, TN Mgoduso<sup>1</sup>, NG Payne<sup>2</sup>, G Whitcher  
Company Secretary: E Price  
1: Non-executive Director 2: Independent Non-executive Director



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# CESA

Consulting Engineers South Africa

This is to certify that

**ISA & Partners (Pty) Ltd**

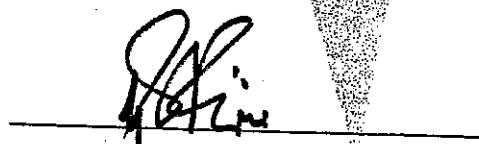
**(909)**

Is a member & fully subscribes to the  
Constitution & Code of Conduct of  
Consulting Engineers South Africa

Signed at Sandton, on this

22 October 2010

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Chief Executive Officer

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## **PART C4.2**

# **Technical Report for the Installation of 7,576 Water Meters for Senekal/Matwabeng (June 2010)**

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