

PART B: PARTICULAR CONDITIONS OF CONTRACT

The following amendments are the South African National Road Agency SOC Limited's standard amendments to the FIDIC General Conditions and shall apply to this contract.

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PARTICULAR CONDITIONS AMENDING THE GENERAL CONDITIONS OF FIDIC

1.1 Definitions

1.1.1 The Contract

Replace 1.1.1.1 with:

" **"Contract"** means the Form of Offer and Acceptance, Contract Data, these Conditions, the Specifications, the Drawings, the Schedules, and the further documents (if any), which are listed in the Form of Offer and Acceptance, and further includes drawings and documents or parts thereof, which any of the aforesaid documents incorporate by reference."

Replace 1.1.1.3 with:

" **"Letter of Acceptance"** means the Form of Acceptance as contained in part C1.1.2 of the contract documents."

Replace 1.1.1.4 with:

" **"Letter of Tender"** means the Form of Offer as contained in part C.1.1.1 of the contract document."

Replace 1.1.1.5 with:

" **"Specification"** means that document entitled Scope of Work, as included in the Contract, and any additions and modifications to the Scope of Work in accordance with the Contract. Such document specifies the Works."

Replace 1.1.1.7 with:

" **"Schedules"** means the document(s) completed by the Contractor and submitted with his tender offer, as included in the Contract. Such document(s) may include the Bill of Quantities, data lists and schedules of rates and/or prices."

Replace 1.1.1.8 with:

" **"Tender"** means that section of the Form of Offer and Acceptance called 'Offer' and all other documents which the Contractor submitted as Returnable Documents, as included in the Contract."

Replace 1.1.1.9 with:

" **"Appendix to Tender"** means the completed section entitled C1.2.2 Contract Data – Information provided by the Employer included in the Contract Data."

1.1.1.10 - Add the following:

" **"Bill of Quantities"** shall also mean the Pricing Schedule as contained in section C2.2 of the contract document."

1.1.2 Parties and Persons

Add the following:

"1.1.2.11 **"Targeted Enterprise"** means an enterprise defined in part C3 Scope of Work."

1.1.3 Dates, Tests, Periods and Completions

Replace 1.1.3.9 with:

"A **"day"** means a calendar day, except for any extension of time that is granted under sub-clause 8.4, [Extension of Time for Completion], in which case a day means a working day. A **"year"** means 365 calendar days".

1.1.6 Other Definitions

1.1.6.5 "Laws"

In the 1st line, replace "(or state)" with "(or other spheres of government)" and in the 2nd line, after "other laws", insert "including the South African Common Law".

Add the following:

"1.1.6.10 "Supplementary Agreement" means an agreement between the Employer and the Contractor for executing work, supplemental to the original Contract, which was not contemplated in the original Contract and is also not required for the proper completion of the original Contract."

1.2 Interpretation

Replace the contents of (d) with:

"The expression "written", "in writing", "notify", "the giving of notice", "giving consent", "as instructed" or "at the request of" means that communication, either hand-written or printed by whatever means, including transmission by telefax or e-mail, and resulting in a permanent record. However, such notice, instruction, consent or request is not deemed to have been delivered by virtue of its appearance in the minutes of meetings."

1.5 Priority of Documents

Replace sub-paragraphs items (a) to (h) with:

- "(a) the Forms of Offer and Acceptance**
- (b) the Appendix to Tender within the Contract data**
- (c) the Particular Conditions of Contract**
- (d) the General Conditions**
- (e) the Scope of Works,**
- (f) the project Drawings,**
- (g) the standard Specifications,**
- (h) the standard Drawings, and**
- (i) the Schedules and any other documents forming part of the Contract."**

1.6 Contract Agreement

Replace the 1st two sentences with the following:

"The Parties shall enter into a Contract Agreement when the Employer issues the Form of Acceptance (see Particular Condition 1.1.1.3). The Contract Agreement shall be in the form prescribed in the tender documents"

1.7 Assignment

Change the title of this sub-clause to read "Assignment/Cession" and replace its contents with the following:

"Neither Party shall, without the written consent of the other, assign the contract or any part thereof or any obligation under the Contract or cede any right or benefit thereunder."

1.8 Care and Supply of Documents

In the 1st paragraph, 2nd line, change "two copies" to "one copy"

In the 2nd paragraph, 3rd line, change "six" to "two".

2.3 Employer's Personnel

In the 1st sentence delete "and the Employer's other contractors"

3.1 Engineer's Duties and Authority

After the 3rd paragraph insert the following:

"In addition to the actions stipulated in the General Conditions whereby the Engineer shall first obtain the approval of the Employer, the Employer's approval shall also be obtained before taking any action under sub-clauses 8.4, 11.9, 13.3 and 20.1 as amended in these Particular Conditions"

4.1 Contractor's General Obligations

Add the following sentence to the 1st paragraph:

"With regard to the Contractor's proposals submitted under the item of the Scope of Works entitled "Small Contractor Development, Training and Community Participation", if the Contractor fails to provide the employment or training to the extent proposed, the Employer may impose penalties as set out in the above-mentioned Scope of Works."

Add the following to the 2nd paragraph:

"Where necessary to maintain the rate of progress required by the programme, the Contractor shall assist a Targeted Enterprise Subcontractor employed as a condition of contract in buying, bringing to Site and storing on Site all Materials, Plant and equipment to be supplied by, or required for work to be done by, the Targeted Enterprise Subcontractor."

4.2 Performance Security

Replace the 2nd paragraph with:

"The Contractor shall deliver the Performance Security to the Employer within 14 days of the date of issue of the Letter of Acceptance. The Performance Security shall be issued by a bank or insurance company registered or licensed as a bank or insurance company to do business in the Republic of South Africa and approved by the Employer and having an office or banking facility in the Republic of South Africa. The Performance Security shall be subject to approval by the Employer and shall be in the form prescribed in the tender documents or in another form approved by the Employer."

In the last line of the last paragraph replace the words "Performance Certificate" with "Taking-Over Certificate".

4.4 Subcontractors

Change the title to read "Subcontractors and Suppliers"

In the first paragraph delete "the whole of the Works" and add "more than 40% of the Works without the express approval of the Employer".

In the 1st line of the 2nd paragraph, after the word "Subcontractor" replace the expression "his agents or employees" with "suppliers, their agents or employees".

Add the following sub-paragraphs:

- "(e) If the Contractor is required to employ one or more Subcontractors under his targeted enterprise development, then the subcontract agreement between the Contractor and the Subcontractor shall be the standard FIDIC subcontract agreement (version 2011) and the provisions of Sub-Clause 5.4 [Evidence of Payments] shall apply as if such Subcontractor is a nominated Subcontractor.
- (f) Each subcontract agreement shall include the provisions:
 - (i) The Contractor undertakes to pay the Subcontractor the full value as certified by the Engineer as being due in each Interim Payment Certificate, without any deduction for plant, equipment, materials or fuel supplied by the Contractor. The Contractor further undertakes to make payment within 21 days of presentation by the Engineer of the Contractor's own Interim Payment Certificate to the Employer for payment, or by the 25th of the month following that in which the Subcontractor completed the work, whichever date is earlier.

- (ii) The Subcontractor's retention money shall be released when a Subcontractor's work does not show any defect within 12 (twelve) months after the completion of the subcontract. However, the Subcontractor's retention money may be withheld but only if the Performance Certificate is unable to be issued because of defective workmanship attributable to the Subcontractor."

4.7 Setting Out

Amend the second line of the second paragraph to read:

".....reference, provided that the Contractor shall provide proof of their inaccuracy before they are used."

4.8 Safety Procedures

Add the following sub-paragraph:

- "(f) enter into and execute an agreement as provided for under Section 37(2) of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993) and shall comply with all other requirements of Act No 85 of 1993 and Construction Regulations, 2014. The agreement in the relevant form shall be prepared at the expense of the Employer."

4.10 Site Data

In the 1st paragraph, 1st sentence, replace "prior to the Base Date" with "either as part of or by reference in the Tender Documents or, otherwise, not later than 7 days before the latest date for submission of the Tender Documents", and delete the 2nd sentence.

4.13 Rights of Way and Facilities

Add the following paragraph:

"The Contractor shall abide by the procedures for the provision of deviation, haul and construction roads, and the requirements for the construction, maintenance and final reinstatement of such roads, all as set out in the standard Specifications."

4.17 Contractor's Equipment

Add the following paragraph:

"The Contractor shall notify the Engineer, in writing, of the names and addresses of the owners of all major items of equipment not owned by the Contractor."

4.18 Protection of the Environment

In the 1st paragraph, 1st sentence add "and shall ensure compliance with all the environmental requirements indicated in part C3 Scope of Work."

Add the following paragraph:

"The Contractor shall indemnify the Employer against any liability arising from or in relation to any of the above matters."

4.19 Electricity, Water and Gas

In the 1st paragraph, 1st line, delete "except as stated below", and delete the 2nd and 3rd paragraphs.

4.20 Employer's Equipment and Free-Issue Material

Delete "and Free-Issue Material" from the title of the sub-clause and delete the 3rd and 4th paragraphs.

4.21 Progress Reports

In the 1st paragraph, 2nd line, delete "in six copies"

4.22 Security of the Site

Replace the fullstop at the end of subclause (b) with a comma and continue this clause as follows:

"... on the Site, or utility or service owners whom the Employer or the Engineer identifies as having also been authorised. Without said notice, the Contractor may refuse access to such utility or service owners; and"

Add the following subclause:

- "(c) The Contractor shall indemnify the Employer against any liability for damage incurred to, or loss of, property within the site identified in the contract documents as not belonging to the Employer regardless of whether or not such damage or loss is caused by the Contractor's equipment."

4.24 Fossils

In the 1st paragraph, 1st sentence after "fossils" insert "and graves" and in the 2nd sentence, add "and shall indemnify the Employer against any liability arising from such loss or damage."

6.5 Working Hours

Replace the 1st sentence with the following:

"No work shall be carried out on Site on Sundays or on any special non-working day stated in the Contract Data or between sunset and sunrise on any day, unless:"

6.7 Health and Safety

Replace the 1st paragraph with the following:

"The Contractor shall provide and maintain on the Site adequate and suitable sanitary and first aid services (including the provision at all times of a person qualified to render medical first aid) and a supply of potable water for the Contractor's, the Employer's and the Engineer's personnel engaged on the Contract and, if necessary, similar facilities elsewhere for such personnel off the Site."

Add the following sub-clause:

"6.12 Indemnity by Contractor

The Contractor shall indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) resulting from:

- (a) the loss of output and delay caused by the slowing down or partial or total stoppage of work caused by:
 - i. all or any of the Contractor's workforce as a result of a dispute between all or any of the Contractor's workforce and the Contractor; or
 - ii. all or any of the Contractor's suppliers' difficulty or impossibility to deliver goods or materials needed to perform the Works;
- (b) any unlawful, riotous or disorderly conduct by or amongst the Contractor's personnel."

8.1 Commencement of Work

In the 1st paragraph, delete the 1st sentence, and in the 2nd sentence replace "42 days after the Contractor receives the Letter of Acceptance" with "28 days of the date of issue of the Letter of Acceptance."

In the 2nd line of the 2nd paragraph, after the words "Commencement Date", insert "but within the period stated in the Contract Data."

8.3 Programme

Replace the 1st sentence of the 1st paragraph with "The Contractor shall submit a detailed programme to the Engineer within 14 days of the Commencement Date."

Add to the items to be included in the programme the following sub-paragraph:

- (e) The Contractor's cash flow forecast.
- (f) Documented details of the contractor's environmental mitigation measures and health and safety plans in respect of all construction activities"

In the 2nd paragraph replace "21" with "14".

8.4 Extension of Time for Completion

Replace the word "Engineer" with "Employer" in the last sentence of the last paragraph.

8.7 Delay Damages

Change the marginal heading of this clause to read "Delay Damages and Other Non-compliance Charges" and insert the following as a first paragraph to this clause:

"Delay damages and other payments to the Employer for late delivery, failure to achieve intra-programme due dates or non-compliance events shall apply as follows:"

Keep the existing two paragraphs unchanged as subclause (a) and add the following subclause relating to other non-compliance charges:

- "(b) If the Contractor fails to achieve programmed completion dates that result in extended duration of accommodation of traffic closures, or fails to adhere to specified controls and targets, penalties shall be levied by deductions from relevant Interim Payment Certificates in terms of subclause (f) of clause 14.3 [Application for Interim Payment Certificates] at the rates stated in the Appendix to Tender."

10.2 Taking Over of Parts of the Works

Delete the 2nd paragraph.

Between the 3rd and 4th paragraphs insert the following paragraph:

"The Employer may make use of any part of the Permanent Works prior to the issue of a Taking Over-Certificate."

Delete the 5th paragraph.

11.9 Performance Certificate

In the 1st paragraph, 2nd line and in the 2nd paragraph, 1st line, replace the word "Engineer" with "Employer".

Delete the last sentence of the 2nd paragraph.

11.11 Clearance of Site

Replace the 1st paragraph with the following:

"With the exception of Plant, Materials and Contractor's Equipment required to complete any outstanding work or to remedy defects or damage as notified by, or on behalf of, the Employer and which Plant, Materials and Contractor's Equipment have been agreed by the Engineer and the Contractor, the Contractor shall, upon receipt of the Taking-Over Certificate, remove all Contractor's Equipment and surplus material, wreckage, rubbish and Temporary Works, from the Site unless otherwise instructed by the Engineer."

In the 2nd paragraph, replace "after the Employer receives a copy of the Performance Certificate" with "after the issue of the Taking-Over Certificate"

12.3 Evaluation

Replace the second sentence of paragraph two with the following:

"However a new rate or price shall be appropriate for an item of work only if notice has been given and if ..."

In sub-paragraph (a)(iv) replace the word "Contract" with "Appendix to Tender"



13.3 Variation Procedure

Replace the 3rd paragraph with the following:

"Each instruction to execute a Variation, unless the Variation is to be executed on a Daywork basis, shall be a written instruction presented in the form of a Variation order. The Variation order shall be presented to the Employer, who shall signify his approval before the order is signed by the Engineer and issued to the Contractor, who shall acknowledge his acceptance by signing the order. The Contractor shall not accept a Variation order that is not approved and signed by the Employer".

13.5 Provisional Sums



In the 1st line of sub-paragraph (b) after "services" insert "and including items for which a prime cost sum has been provided in the Bill of Quantities".

13.6 Daywork

Replace the 2nd and 3rd sentences in the 1st paragraph with "The following procedure shall apply."

Add the following as the 5th paragraph of this sub-clause:

"The work shall be valued in accordance with the Daywork Schedule included in the Contract or, in the absence of a Daywork Schedule or for items not included in the Daywork Schedule the Contractor shall be paid the aggregate of:

- (i) the gross remuneration of the workmen for the time they are actually engaged on the work concerned,
- (ii) the net cost of Materials actually used,
- (iii) an amount in respect of Contractor's Equipment which shall be charged on a time basis at the rates stated in the Tender, failing which at rates, to be agreed between the Contractor and the Engineer or, failing agreement, to be determined by the Engineer on the basis of ruling equipment hire rates and
- (iv) the percentage allowances stated in the Contract Data, which allowances shall be held to cover all charges for the Contractor's and/or Subcontractor's profits, timekeeping, clerical work, insurance, establishment, superintendence and the use of hand tools."

13.8 Adjustments for Changes In Costs

Replace this sub-clause with the following:

"The value of certificates issued in terms of Sub-clause 14.6 (excluding the value of those special Materials specified in the Contract Data) shall be increased or decreased by applying a Contract Price adjustment factor calculated according to the formula and the conditions set out in the Contract Price adjustment Schedule appended to these Particular Conditions.

Price adjustments for variations in the costs of special Materials specified in the Contract Data shall be made in the manner set out in the Contract Price adjustment schedule."

14.3 Application for Interim Payment Certificates

In the 1st line of the 1st paragraph, delete "in six copies."

In the 4th line of the 1st paragraph, change "the report" to "reports."

In the 2nd paragraph, sub-paragraph (c), after "above amounts" insert "and 80% of the value of Materials on Site" and add the following as a final paragraph:

"If, as stated in the Contract Data, a Retention Money Guarantee is permitted and the Contractor elects to furnish it, the guarantee shall, at the cost of the Contractor, be executed by an insurance company or bank in a form approved by the Employer.

The said company or bank shall be registered or licensed to do business in the Republic of South Africa and shall have an office and banking facility in the Republic of South Africa and shall be subject to approval by the Employer.

The aggregate liability under the guarantee shall be the maximum amount of retention monies to be retained by the Employer, which amount shall be as stated in the Contract Data.

Other conditions, if any, additional to the above standard conditions shall be as stated in the Contract Data.

The guarantee shall expire on the date on which the last of the retention monies (which, but for the guarantee, would have been retained by the Employer) becomes payable to the Contractor.

The guarantee shall be returned to the guarantor upon final payment of the aggregate liability or on the date of expiry, whichever is the earlier."

14.5 Plant and Materials intended for the Works

In the first paragraph delete "If this Sub-Clause applies".

Delete the 2nd paragraph.

In the 3rd paragraph, delete sub-paragraphs (b) and (c)(i) and amend sub-paragraph (a) so that (c)(ii) becomes (a)(iii) thus:

"(a)(ii) supported by satisfactory evidence; and
(a)(iii) the relevant Plant and Materials have been delivered to and ..."

Add the following paragraph:

"If so agreed in writing by the Employer, the provisions of this Sub-Clause 14.5, as amended herein, shall apply equally to Plant and Materials intended for incorporation in the Permanent Works and stored at places other than the Site."

14.6 Issue of Interim Payment Certificates

In the 2nd line of the 1st paragraph replace "28" with "14"

14.7 Payment

In sub-paragraphs (b) and (c) of the 1st paragraph replace "56" with "28"

Delete the 2nd paragraph.

14.8 Delayed Payment

Replace the 2nd paragraph with the following:

"These financing charges shall be at the rate prescribed in terms of the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975)"

14.10 Statement at Completion

In the 2nd line of the 1st paragraph delete "six copies of".

14.11 Application for Final Payment Certificate

In the 2nd line of the 1st paragraph delete "six copies of".

In the 3rd paragraph, replace the last sentence with:

"Thereafter, when the dispute is finally resolved, the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement."

14.15 Currencies of Payment

Delete this sub-clause.

15.2 Termination by the Employer

Delete the word "or" at the end of sub-paragraph (e) and replace sub-paragraph (f) with the following:

- "(f) gives or has given, offers to give or has offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
- (i) for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer or State Department or Organ of State, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer or State Department or Organ of State,

or if any of the Contractor's Personnel, agents or Subcontractors gives or has given, offers to give or has offered to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination,"

Add the following sub-paragraphs:

- "(g) misrepresented, whether innocently, negligently or fraudulently, the true facts requested in the tender documents; or
- (h) acts in such a way, on this contract or any other contract with the Employer, that a statute relating to the combating of fraud, corruption, uncompetitive practice and the like can be invoked."

Replace the expression "e) or f)" in the penultimate line of the second paragraph with:

"e), f), g) or h)".

Replace the full stop at the end of the third paragraph with a comma and add the following:

"including the right to terminate any other contract between the Employer and the Contractor and to forbid the Contractor or any employee, partner, shareholder or director of the Contractor to tender on any future projects put out to tender by the Employer for a period of five years from the date of notice of termination, which period may be reduced by application to and at the sole discretion of the Employer."

17.3 Employer's Risks

Add the following to sub-paragraph (c):

"unless these risks are insurable with the South African Special Risks Insurance Association (SASRIA) at the time of tendering and it is stipulated in the Contract Data that the Contractor is to effect insurance against these risks"

18.1 General Requirements for Insurances

Replace this sub-clause with the following:

"The Contractor shall effect all insurances as have been proposed and agreed by the Contractor as being necessary to adequately cover his insurable obligations under the Contract and shall maintain such insurances for the duration of the Contract.

With regard to the insurances to be effected for insurance against injury to Persons and Damage to property the Contractor shall arrange for the policy to be issued in the joint names of the Contractor, the Employer and Subcontractors and will incorporate a Cross Liability clause.

The Employer shall be entitled at his discretion to call for evidence of the scope and validity of such insurance as and when this may be required.

If required, the Contractor shall provide proof that he has paid all contributions required in terms of the compensation for Occupational Injuries and Diseases, 1993 (Act No 130 of 1993)."

18.2 Insurance for Works and Contractor's Equipment

Delete this sub-clause.

18.3 Insurance against Injury to Persons and Damage to Property

Delete this sub-clause.

18.4 Insurance for Contractor's Personnel

Delete this sub-clause.

19.1 Definition of Force Majeure

In the third line of subclause 19.1(iii) insert "or suppliers," after the word "Subcontractors"

19.5 Force Majeure Affecting Subcontractor

Amend the title to read "Force Majeure Affecting Subcontractor and Supplier"

In the first line insert "or supplier" after the word "Subcontractor"

20.1 Contractor's Claims

In paragraph 5, insert the following after the first sentence:

"If an extension of time is granted the Contractor shall be paid such additional time-related Preliminary and General allowances as are appropriate having regard to any other compensation which may already have been granted in respect of the circumstances concerned. Payment of costs additional to the above will only be considered if the costs derive from claims that fall within the terms of Clause 13 [Variations and Adjustments] and/or Sub-clause 17.3 [Employer's Risks]."

Replace the 6th paragraph with the following:

- ⑥ "After receiving a claim or any further particulars supporting a previous claim, the Engineer shall present such claim or particulars to the Employer, together with his recommendations, for a ruling, which ruling shall be given to the Contractor within 42 days after receiving a claim or any further particulars, provided that the said period of 42 days may be extended by application from one Party and approval of the other. If the Employer fails to give his ruling within the specified period, or agreed extension thereto, it shall be deemed that the Employer has dismissed the claim."

Delete the 8th paragraph.

20.2 to 20.8

Replace these sub-clauses with the following:

20.2 Settlement of Disputes

- (a) The Contractor shall have the right to dispute any ruling given or deemed to have been given by the Employer or the Engineer, provided that, unless the Contractor shall, within 42 days after his receipt of a ruling or after a ruling shall have been deemed to have been given, give written notice (hereinafter referred to as a "Dispute Notice") to the Engineer, referring to this Clause, disputing the validity or correctness of the whole or a specified part of the ruling, he shall have no further right to dispute that ruling or the part thereof not disputed in the said Dispute Notice.
- (b) All further references herein to a ruling shall relate to the ruling, or part thereof, specified in the Dispute Notice, as varied or added to by agreement between the Contractor and the Engineer or by the Engineer's decision in terms of sub-paragraph (c) or by the Mediator's opinion to the extent that it has become binding in terms of Sub-clause 20.3(f).
- (c) The Engineer shall
 - i) before giving his decision on the dispute, consult the Employer thereon and give the Contractor a reasonable opportunity to present written or oral submissions thereon, which latter shall be confirmed in writing within 7 days
 - ii) deliver his decision in writing to the Employer and to the Contractor, and
 - iii) give his decision within 56 days of his receipt of the Dispute Notice, or within any further period as may be agreed between the Engineer and the Contractor, failing which, he shall be deemed to have given a decision affirming, without amendment, the ruling concerned.
- (d) Unless either the Employer or the Contractor, shall, within 28 days after his receipt of notice of the decision in terms of sub-paragraph (c)(ii) or after the decision is deemed to have been given in terms of sub-paragraph (c)(iii), have given notice in writing to the Engineer, with a copy to the other Party, disputing the Engineer's decision or a specific part thereof, he shall have no further right to dispute any part of the ruling not specified in his said notice.
- (e) If either Party shall have given written notice in compliance with sub-paragraph (d), the dispute shall be referred to mediation in terms of Sub-Clause 20.3 unless either Party has given written notice to the other Party of its intention to refer the matter in dispute to court, which notice shall be given either:
 - i) within 28 days of receipt of notice of the Engineer's decision, or
 - ii) within 14 days of receipt by the one Party of the other Party's notice of dispute of the Engineer's decision.

If notice of intention to refer the matter in dispute to Court has been served by either party, the matter in dispute shall not be referred to mediation but shall be referred to Court.

- (f) Notwithstanding that the Contractor may, in respect of a ruling, have given a Dispute Notice, the ruling shall be of full force and carried into effect unless and until otherwise agreed by both Parties in terms of Sub-Clause 20.3(f) or as determined in a court judgement.

20.3 Mediation

- (a) The mediation referred to in Sub-Clause 20.2(e) shall be conducted by a mediator selected by agreement between the Parties or, failing such agreement within 7 days after a written request by either Party for such agreement, nominated on the application of either Party by the President for the time being of the South African Institution of Civil Engineering.

If, for any reason, the person appointed fails to assume or to continue in the office concerned:

- (i) the provisions of Sub-Clause 20.3 shall apply mutatis mutandis in the appointment of a successor, and
- (ii) in making his nomination in terms of this sub-clause, the president for the time being of the South African Institution of Civil Engineering shall, at his own discretion, act in consultation with the presidents for the time being of Consulting Engineers South Africa and the South African Federation of Civil Engineering Contractors, and

- (iii) if the president required to make a nomination in terms of this sub-clause shall have a direct or indirect interest in the subject matter of the dispute, the nomination shall be made by the chief executive officer or the next senior officer of the body concerned who has no such interest.
- (b) Neither Party shall be entitled to be represented at any hearing before, or at, any meeting, or in any discussion, with the mediator except by any of the following:
 - i) the Party himself, if a natural person,
 - ii) a partner in the case of a partnership,
 - iii) an executive director in the case of a company,
 - iv) a member in the case of a close corporation,
 - v) the Engineer,
 - vi) a bona fide employee of the party concerned, and
 - vii) a professional engineer appointed for the purpose by the Party concerned.
- (c) The mediator shall, as he deems fit, follow formal or informal procedure and receive evidence or submissions orally or in writing, sworn or unsworn, at joint meetings with the Parties or separately or from any person whom he considers can assist in the formulation of his opinion, provided that:
 - i) each Party shall be given reasonable opportunities of presenting evidence or submissions and of responding to evidence or submissions of the other Party, and
 - ii) each Party shall be given full details of any evidence or submissions received by the Mediator from the other Party or any other person otherwise than at a meeting where both Parties are present or represented.
- (d) The mediator shall have the power to propose to the Parties compromise settlements of or agreements in disposal of the whole or portion of the dispute.
- (e) The mediator shall, as soon as reasonably practical, give to each of the Parties his written opinion on the dispute, setting out the facts and the provisions of the Contract on which the opinion is based and recording the details of any agreement reached between the Parties during the mediation.
- (f) The mediator's opinion shall become binding on the Parties only to the extent correctly recorded as being agreed by the Parties in the mediator's written opinion or otherwise as recorded as being agreed in writing by both Parties subsequent to the receipt of the mediator's opinion.
- (g) The dispute on any matter still unresolved after the application of the provisions of sub-paragraph (f) shall be resolved by court proceedings.
- (h) Save for reference to any portion of the mediator's opinion which has become binding in terms of sub-paragraph (f), no reference shall be made by or on behalf of either Party, in any proceedings subsequent to mediation, to the mediator's opinion, or to the fact that any particular evidence was given, or to any submission, statement or admission made in the course of the mediation.
- (i) Irrespective of the nature of the mediator's opinion:
 - (i) each Party shall bear his own costs arising from the mediation, and
 - (ii) the Parties shall in equal shares pay the mediator the amount of his expenses and the amount of his fee based on a scale of fees as agreed between the mediator and the Parties before the commencement of the mediation.

20.4 Reference to Court

If a dispute is still unresolved as provided for in sub-paragraph (g) of sub-clause 20.3 or the dispute is one described in sub-clause 20.5, the dispute shall be determined by court proceedings, provided that:

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

- (b) no ruling or decision given by the Engineer in accordance with the provisions of the Contract shall disqualify him from being called as a witness and giving evidence before the court on any matter whatsoever relevant to the dispute concerned, and
- (c) the court shall have full power to open up, review and revise any ruling, decision, order, instruction, certificate or valuation of the Engineer relevant to the matter in dispute.

20.5 Special Disputes

Notwithstanding anything elsewhere provided in sub-clauses 20.2, 20.3 and 20.4, any dispute between the Contractor and the Employer,

- (a) not relating to a ruling, decision, order, instruction or certificate by the Engineer, or
- (b) arising after the completion of the Contract or, if a Defects Notification Period is provided, after the termination of that period,

shall be determined, without the application of the provisions of sub-clauses 20.2 and 20.3 by court proceedings which may be initiated by either Party, in which event the provisions of sub-clause 20.4 shall apply.

20.6 Continuing Validity of sub-clauses 20.2 to 20.6

Sub-clauses 20.2 to 20.6 inclusive constitute a separate, divisible agreement from the rest of the Contract and shall remain valid and applicable, notwithstanding that the Works may have been completed or that the rest of the Contract may be void or voidable or may have been cancelled for any reason."

APPENDIX: General Conditions of Dispute Adjudication Agreement

Delete this appendix

ANNEX: Procedural Rules

Delete this annexure

APPENDIX TO THE PARTICULAR CONDITIONS:

CONTRACT PRICE ADJUSTMENT SCHEDULE

1. **Contract Price Adjustment** In accordance with sub-clause 13.8, the value of each certificate issued in terms of sub-clause 14.6 shall be increased or decreased by the amount obtained by multiplying "Ac", defined in clause 2 of this Schedule, by the Contract Price adjustment factor, rounded off to the sixth decimal place (or the fourth decimal place if expressed as a percentage), determined according to the formula:

$$(1 - x) * [(aL_t/L_o) + (bE_t/E_o) + (cM_t/M_o) + (dF_t/F_o) - 1]$$

in which the symbols have the following meanings:

"x" is the proportion of "Ac" which is not subject to adjustment. Unless otherwise stated in the Appendix this proportion shall be 0,15.

"a", "b", "c" and "d" are the co-efficients determined by the Engineer and specified in the Appendix to Tender, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of labour, equipment, materials (other than "special materials" specified, in terms of sub-clause 13.8, in the Appendix to Tender) and fuel respectively. The arithmetical sum of "a", "b", "c", and "d" shall be unity.

"L" is the "Labour Index" and shall be the price index for "Consumer Price Index" for the urban area specified in the Appendix to Tender, as published in the Statistical Release P0141, Additional tables, Table 14, of Statistics South Africa.

"E" is the "Equipment Index" and shall be the price index for "Civil Engineering Plant", as published in the Statistical Release P0151, Table 4, of Statistics South Africa. Note that Statistics South Africa's "Civil Engineering Plant" includes equipment.

"M" is the "Materials Index" and shall be the price index for "Civil Engineering Materials", as published in the Statistical Release P0151, Table 3, of Statistics South Africa.

"F" is the "Fuel Index" and shall be the price index for "Diesel fuel – Coast and Witwatersrand", as published in the Statistical Release P0151, Table 4, of Statistics South Africa.

The suffix "o" denotes the basic indices applicable on the Base Date as defined in sub-clause 1.1.3.1 of the General Conditions of Contract.

The suffix "t" denotes the current indices applicable to the month in which the last day of the period falls to which the relevant payment certificate relates.

If any index relevant to any particular Payment Certificate is not known at the time when the certificate is prepared, the Engineer may estimate the value of such index. Any correction which may be necessary when the correct indices become known shall be made by the Engineer in subsequent Payment Certificates.

2. Assessment of amount subject to adjustment

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

$$Ac = T - S - D - W - G - Ap$$

In which formula the symbols have the following meanings:

"T" is the summation of the total value of the:

- (i) preliminary and general items,
- (ii) work done, and
- (iii) Materials on Site,

as certified in the Payment Certificate under consideration without any deduction whatsoever and before any adjustment made in terms of this Schedule

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

- (i) the amounts actually expended and substituted for any prime cost sums;
- (ii) the value of any work done by Nominated Subcontractors;
- (iii) the value of any work done against Provisional Sums;
- (iv) the value of any extra or additional work done under a Variation order,

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

"D" is the value of work included in "T" and done at new rates fixed in terms of sub-clause 12.3, where those rates are not based on labour, Contractor's Equipment or Materials costs in force at the time of tendering. Generally new rates may be based on current costs and de-escalated to the Base Date of the indices, in which case work done at these rates shall not be included in the value of "D".

"W" is the amount included in "T" and paid for any Daywork executed at Cost plus percentage allowances as set out in sub-clause 13.6 as amended by Particular Condition.

"G" is the amount included in "T" for Materials classified and dealt with as "special materials" in terms of sub-clause 13.8 as amended by Particular Condition.

"Ap" is the summation of all "Ac" amounts determined in terms of Clause 2 of this Schedule for all Payment Certificates preceding in time the Payment Certificate under consideration.

3. Reduction of CPAF after Time for Completion has expired

Save only for Variations ordered to be carried out after the Time for Completion has expired, the Contract Price adjustment factor to be applied to certificates relating to work done or materials supplied after the expiry of the Time for Completion shall be half the factor calculated by inserting in the formula referred to in Clause 1 of this Schedule the indices Lt, Et, Mt and Ft applicable at the date of expiry of the Time for Completion.

4. **Special materials**

The price of each "special material" specified in the Appendix to Tender shall be increased or decreased by the net amount of any variation incurred after the date of the Tender on the basis set out in the Contract, provided that any claim for adjustment in terms hereof shall be substantiated by the submission of acceptable invoices and any other supporting documents which the Engineer considers necessary for that purpose. However, except for Variations ordered in terms of Clause 13 (Variations and Adjustments) all adjustments after expiry of Time for Completion shall be increased or decreased by half the net amount of such calculated variation.

For the purpose of this clause, "the net amount of any Variation" in respect of a particular material referred to as a "special material" in terms of sub-clause 13.8 shall be calculated by multiplying the difference between the rate or price entered in the Contract by the Contractor for that Material and the equivalent rate or price actually paid by the Contractor for the Material by the quantity of the Material in question.

5. **Assessment of Indices if certificates are not issued monthly**

If more than one month intervenes between the month applicable to any Payment Certificate and the month applicable to the immediately succeeding payment certificate, then the indices "Lt", "Et", "Mt" and "Ft" applicable to the succeeding Payment Certificate shall each be taken as the arithmetic mean, rounded off to the second decimal place, of the relevant indices applicable to the month of measurement and to such intervening months.

1. MINING AUTHORISATION

- 1.1 *Where the Agency holds the Mining Authorisation and is therefore the "Owner" in terms of the Mines Health and Safety Act No. 29 of 1996 and Amendment Act 1997, the following Particular Condition of Contract shall be included:*

SUB-CLAUSE 17.1: INDEMNITIES

Insert the following paragraph between paragraph (6) and the final paragraph:-

- (c) The Contractor hereby indemnifies and holds blameless the Agency against any and all losses that may be incurred by the Agency as Owner of the Mine(s) as a result of any act or omission by the Contractor, its employees or subcontractors in contravention of the Mines Health and Safety Act, (Act 29 of 1996), as amended."

3. SPECIAL CONDITIONS OF CONTRACT WITH A NOMINATED SUBCONTRACTOR

When it is proposed to employ nominated subcontractors for specialised work under the contract and the Employer wishes to prescribe the conditions of subcontract, the form of Subcontract Agreement and the Form of Performance Security (to be provided by the subcontractor), the following particular condition of contract will be required:

CLAUSE 5: NOMINATED SUBCONTRACTORS

Add the following paragraph to sub-clause 5.1:

"In this contract the contractor shall enter into a Subcontract with the nominated subcontractor on the terms and conditions stipulated by the Employer and set out in C1.2.2 to this document."

C1.2.2 APPENDIX TO TENDER: CONTRACT DATA - INFORMATION PROVIDED BY THE EMPLOYER

Notes to tenderer:

- 1. This form is the equivalent of the Appendix to Tender as defined in Sub-Clause 1.1.1.9 of the FIDIC Conditions of Contract.**
- 2 Clause numbers (Cl. No.) refer to the FIDIC Conditions of Contract. The prefix A refers to an amendment to these conditions.**

<u>Item</u>	<u>Clause No</u>	<u>Data</u>
Employer	1.1.2.2	<p>means the South African National Roads Agency SOC Limited instituted in terms of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998) or a person delegated by the South African National Roads Agency SOC Limited to act on its behalf.</p> <p>The Employer's address is: The South African National Roads Agency SOC Limited 48 Tamboe Avenue Val De Grace Pretoria, 0184</p>
Engineer	1.1.2.4	<p>means MottMacDonald PDNA</p> <p>The engineer's address to be used for this contract is: <i>Physical address:</i> MottMacDonald PDNA House, 25 Scott Street, Waverley, 2090 South Africa</p> <p><i>Postal address:</i> P O Box 7707, Johannesburg, 2000 South Africa</p>
Communications	1.3	<p>The addresses for communication between the parties shall be: SANRAL Eastern Regional Office</p>
Employer		<p><i>Physical address:</i> 58 van Eck place, Mkondeni Scottsville, Pietermaritzburg 3201</p> <p><i>Postal address:</i> P O Box 100410, Scottsville, Pietermaritzburg 3209</p>

<u>Item</u>	<u>CI No</u>	<u>Data</u>
Period of validity of tender	-	12 weeks after the closing date for tenders
Time for completion of works	1.1.3.3.	24 months maximum including the contractor's holidays in December and January
Defects for notification period	1.1.3.7	12 calendar months
Laws	1.1.6.5	<i>The law governing this contract is South African law</i>
Time for access to the site	2.1	Nil (access on Commencement Date)
Amount of performance security	4.2	10% of the accepted contract amount (CI no. 4.11)
Base date	13.8	Base date for this contract is April 2014
Special non working hours/days	A6.5	<p>All designated public holidays (including all foreseeable statutory declared election days):</p> <p>(a) Christmas shut-down between 13 December 2014 and 04 January 2015 and 13 December 2015 and 04 January 2016,</p> <p>(b) 09:00 Thursday before Easter Weekend and 12:00 Tuesday after Easter Weekend</p> <p>(c) Day of school term closure</p> <p>(d) Accommodation of traffic restrictions</p> <p>(e) Embargo period for seal work</p>
Period in which works must commence	A8.1	Not later than 30 days after the commencement date
Extension of time for completion	A8.4	Exceptional adverse climatic condition shall be considered where the return period of the climatic condition is greater than 5 times the contract duration. On this contract the return period is 120 months
Delay damages and Other Non-compliance Charges	A8.7	<p>Delay Damages – R 20 000.00 /day</p> <p>i. Accommodation of traffic non-compliance</p> <p>(i) Occurrence – R10 000.00/number</p> <p>(ii) Time delay – R1000.00/hour</p> <p>ii. Overloading – 2 x Unit Rate x weight factor x distance hauled</p> <p>iii. Contract Participation Targets – 50% of unachieved target</p> <p>iv. Layer irregularities</p> <p>(i) Asphalt – quantity/100m x unit rate x payment adjustment factor</p> <p>(ii) Concrete – quantity/100m x unit rate x payment adjustment factor</p> <p>(iii) Base – quantity/100m x unit rate x payment adjustment factor</p>

<u>Item</u>	<u>CI No</u>	<u>Data</u>
Evaluation	A12.3	The term "fixed rate item" shall apply to all items of work listed in the Pricing Schedule (including agreed items of work listed in variation orders).
Daywork allowances	A 13.6	Not required (Dayworks provided for in the pricing schedule)
Special materials	A13.8	Bitumen binder extracted from petroleum based products and used on site, including that used in asphalt, irrespective of whether it is produced and/or placed by the contractor or an approved sub-contractor
Price Variations	A 13.8	Roadworks / Structures $x = 0.15$ (a) $\approx 0.20 / 0.35$ (b) $\approx 0.40 / 0.15$ (c) $\approx 0.25 / 0.45$ (d) $\approx 0.15 / 0.05$ "L" is the consumer price index for the Province of Free State and area of Xhariep District, Trompsburg Municipality
Retention money: - Percentage	14.3 (c)	10% of value of completed work
- Limit	14.3 (c)	R 1 500 000.00
Guarantee	A14.3 (c)	This will be considered provided that the tenderer submits his proposal as an alternative tender indicating what discount he proposes to give
Minimum amount of interim payment certificate	14.6	R 10 885 000.00
Contractor to insure with SASRIA	A17.3C	Required
Environmental Management Plan (EMPI)	C1004(d)	DEO means: Designated Environmental Officer
Contract Participation Goals (CPG):	D1003(b)	
Targeted Labour of which minimum contributions by Targeted Groups:		6 %
i Woman		30% of value
ii Youth (under 35 years)		30% of value
Targeted Enterprise of which minimum contribution:		12%
i. Woman owned companies		10% of value