



CONTRACT

FOR

CONSULTANCY AND IMPLEMENTATION SERVICES

PROJECT NAME: ELECTRICAL ENGINEERING CONSULTANT INEP PROJECT IN WARD 11

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Contract relating to consultancy and implementation services

Made and entered into between

UMDONI MUNICIPALITY

Herein represented by **Mrs. TC Ndlela** in his capacity as Municipal Manager of the UMDONI MUNICIPALITY, (She being duly authorized hereto)

("Client")

Of the one part

AND

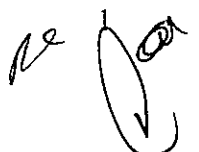
BI INFRASTRUCTURE CONSULTANTS (PTY) LTD

.....
Registration Number 2013/082305/07

duly incorporated in accordance with the laws of South Africa, with limited liability, herein represented by **[Mr F. DUBE]**, in his capacity as a director thereof, he is duly authorised hereto)

("Consultant or Implementing Agent/ Engineering")

Of the other part.

A handwritten signature in black ink, consisting of a stylized 'F' followed by a circular flourish.

GENERAL CONDITIONS OF CONTRACT

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1. DEFINITIONS

In the Contract, except where the context otherwise requires-

- 1.1 "Business Day" means any day other than a Saturday, Sunday or Public Holiday.
- 1.2 'Conditions of Contract' means these General Conditions of Contract for Services;
- 1.3 Consultancy Services' means the services specified in Schedule 1 of this Contract and/or as shall be determined by the Client from time to time;
- 1.4 Consultant' means the person(s), whether natural or juristic, appointed in writing by the Client to perform the Consultancy Services and includes their officers, and employees;
- 1.5 Contract means the Agreement between the Client and the Consultant as constituted by:
- i) the General Conditions of Contract
 - ii) the Schedules to this Contract
 - ii) the tender document where appropriate
 - iv) the letter of acceptance
- and where there arises an inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity will be in the order set down above;
- 1.6 'Contract Material' means all material, including but not limited to records, created in connection with or for the purposes of performing the Consultancy Services; as well as all discoveries, inventions and documents made or developed in the course and scope of this contract.
- 1.7. Intellectual property rights' means any patent, registered design, trade mark or name, copyright or other protected right;
- 1.8 Invitation' means the invitation extended to the Consultant by the Client to submit an offer for the performance of Consultancy Services;
- 1.9 'Legislative requirements' includes:
- (a) acts, ordinances, regulations, by-laws, order, awards, proclamations or any other enactment having the force of law in the Republic of South Africa and UMDONI MUNICIPALITY that are applicable to the Consultancy Services; and
 - (b) certificates, licenses, consent, permits, approvals and requirements of organizations having jurisdiction applicable to the Consultancy Services;
- 1.10. "Parties" means the Client and the Consultant\ Implementing Agent;

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- 1.11. "Person" means (a) any organ of state; (b) any company incorporated or registered as such under any law; (c) anybody of persons corporate or unincorporated; (d) any natural person.
- 1.12. "Client" means the UMDONI MUNICIPALITY
- 1.13. "Client's consent" means prior written consent (which shall not be unreasonably withheld) of the Client which may be given subject to such terms and conditions as the Client may see fit to impose;
- 1.14. 'Project Manager' means the designated representative of the Project Management Team (PMT) in relation to the programme, or an official delegated by him/her;
- 1.15. 'Records' means all material including but not limited to books, documents and information, data stored or date stored and processed by any means disclosed or made available by the Client to the Consultant in connection with the performance of the Contract;
- 1.16. 'Schedule' means any schedule attached to these Conditions and signed by or on behalf of the parties;

"Terms of Reference" means the document issued by the Client to the Consultant for the purpose of describing the scope of the project and the scope of the services to be provided by the Consultant and is wholly contained in Schedule 1 to this contract.

2. INTERPRETATION

2.1 In this agreement, words importing-

2.1.1. The singular, include the plural and vice versa;

2.1.2. Any one gender, include the other genders.

2.2 Any reference in this agreement to an enactment (or any regulations promulgated pursuant thereto) is to that enactment (or those regulations) as at the date of signature hereof.

2.3 Any reference in this document to "this agreement" or any other agreement or document, shall be construed as a reference to this Agreement or, as the case may be, any other agreement or document, as may be, or may from time to time, be amended, varied, contradicted, novated or supplemented by agreement of the parties or, if permitted by this Agreement by one of them.

2.4 Any reference in this document to "this Agreement" or " this Contract" refers to these General Conditions of Contract as well as any signed Schedules or other Annexures that are attached to it.

2.5 Any reference to the "Client" in this Agreement shall refer to the Municipal Manager of the UMDONI MUNICIPALITY or the Project Manager appointed in terms of Clause 6 of this Agreement;

- 2.6 If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is only in the definition clause.
- 2.7 When any number of days is prescribed in this Agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a business day, in which event the last day shall be the next succeeding business day 7.
- 2.8 In the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a business day, the relevant day for performance shall be the immediately subsequent business day.
- 2.9 References in this Agreement to day/s, month/s or year/s, shall be construed as Gregorian calendar day/s, month/s or year/s.
- 2.10 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.
- 2.11 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor in modification nor in amplification of the terms of this agreement nor any clause hereof.
- 2.12 The use in this Agreement, of the word "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation such general wording or such specific example or examples.
- 2.13 The rule of construction that, in the event of ambiguity, this Agreement shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 2.14 This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the Parties, as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.15 Where figures are referred to in this Agreement, in numerals and words, if there is any conflict between the two, the words shall prevail.
- 2.16 The expiration or termination of this agreement shall not affect either such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which, of necessity, must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for a continuation.

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3. RESPONSIBILITIES AND OBLICATIONS OF THE CONSULTANT

3.1. Performance

The Consultant is hereby appointed subject to the scope of services incorporating the terms of reference as agreed with the Client and subject to whatever conditions as shall be determined by the Client and/or the Project Manger to carry out the following duties/obligations:

- 3.1.1. Perform and complete the Consultancy Services in a proper, efficient and prompt manner and in accordance with the Contract and as specified in the Schedules to this agreement;
- 3.1.2. consult regularly with the Client throughout the performance of the Contract;
- 3.1.3. comply with the directions of the Client and/or Project Manager given pursuant to a provision of the Contract an all-reasonable instruction necessarily incidental to the performance of this contract;
- 3.1.4. promptly give written notice to the Client if and to the extent to which, the Consultant becomes aware that any documents or other information provided by the Client is ambiguous or inaccurate or is otherwise insufficient to enable the Consultant to carry out the Consultancy Services;
- 3.1.5. as soon as reasonably practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or performance of the Consultancy Services, give written notice to the Client detailing the matter or circumstances and its anticipated effect on the Consultancy Services;
- 3.1.6. comply with all legislative requirements in carrying out the Consultancy Services including but not limited to the Engineering Profession Act 46/2000 and all the relevant and applicable board notices as shall be published in Government Gazette from time to time;
- 3.1.7. except as required by law or provided by the Contract treat as confidential all Records and Contract Material;
- 3.1.8. attend meetings and briefings reasonably required by the Client or the Project Manager;

3.2. Commencement Date

- 3.2.1. The appointment of the Consultant shall commence from the date of the Agreement or from the time when the Consultant began to perform any of the services provided for in the agreement, whichever is earlier

3.3. Completion

- 3.3.1. Unless terminated under one of the other clauses, the appointment the Consultant shall be completed when the Consultant submits the Close-out Report or when he renders the closing account, whichever is later.

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3.4. Undertakings and Warranties

The Consultant warrants and undertakes to the Client that:

- 3.4.1. It has examined the Contract and Schedule, understands it and that it correctly reflects what has been agreed by the Parties.
- 3.4.2. It has been supplied with enough of the Contract Materials to enable him to undertake and complete all the services contemplated in the Schedules and Annexures and that insofar as there was a need for explanation, the Consultant is satisfied with the explanation provided. However, the Client does not in any manner vouch for the accuracy or correctness of whatever Contract Material it might be required to furnish to the Consultant.
- 3.4.3. It has the necessary skill and experience to render the services in the particular fields relevant to the Consultancy Services and hereby warrants that it has such skill and experience.
- 3.4.4. The Consultant acknowledges that the Client has entered into the Contract in reliance upon the foregoing representation and that, but for that representation, it would not have done so.
- 3.4.5. The Consultant warrants that to the best of its knowledge, information and belief at the date of the Contract no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract.
- 3.4.6. The Consultant agrees to arrange and maintain professional indemnity insurance, cover all the time, in respect of the Consultancy Services provided under this agreement up to a period of three years from the date of termination or completion of the Consultancy Services. The professional indemnity cover shall be at least twice the amount of fees payable to the Consultant.

3.5. Standard of Conduct of Consultant

- 3.5.1. The Consultant agrees that it will perform the Consultancy Services to the standard of skill, care and diligence expected of a skilled and competent professional practicing in the particular fields relevant to the Consultancy Services.
- 3.5.2. The Consultant undertakes to be true and faithful to the Client in all dealings and transactions whatsoever relating to its business and interests and in the furtherance of its duties under this Contract.
- 3.5.3. The Consultant shall not in the future engage in any conduct which is calculated to or may have the effect of bringing the Client into disrepute whether such conduct will be calculated or not, and warrants that it has not done so in the past.
- 3.5.4. The Consultant shall not purport to have any authority to represent the Client.

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3.6. Independent Contract

- 3.6.1. The Consultant is appointed by this agreement as an independent contractor.
- 3.6.2. The Consultant must not represent itself, in any manner, or allow itself to be represented as being an employee or agent of the Client;
- 3.6.3. The Consultant does not by virtue of the Contract be or become an employee or agent of the Client.

3.7. Personnel

- 3.7.1. The Consultant must ensure that Consultancy Services are performed by the key personnel nominated in the Contract or who have been substituted for one or more of such nominated personnel with the written consent of the Client.
- 3.7.2. If any of the nominated key personnel are not available to perform any of the Consultancy Services, or unable properly to do so because of physical or mental incapacity or incompetence, the Consultant must immediately;
 - 3.7.2.1. give notice to the Client;
 - 3.7.2.2. arrange a replacement of that person with a person acceptable to the Client, at no additional cost to the Client; and
- 3.7.3. The Consultant must at no additional cost to the Client, promptly remove any nominated key personnel, upon notice given to the Client to effect such a removal, from performing work on or in connection with the Consultancy Services and must replace that person by a person acceptable to the Client.
- 3.7.4. The acceptance referred to above in clause 3.7.3. must be in writing.

3.8. Progress and Program

The Consultant must;

- 3.8.1. proceed with the Consultancy Services with due expedition and without delay;
- 3.8.2. if requested by the Project Manager, submit to the Project Manager within 7 (seven) days of the receipt of the request, a program for carrying out the Consultancy Services and, thereafter, shall carry out and complete the Consultancy Services in accordance with the program submitted unless the Project Office or Project Manager does not approve of the program in which event the consultant shall submit a new program within the next 7 (seven) days, or within any ensuing period or periods of 7 (seven) days, until such approval be give;

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- 3.8.3., ensure that any program submitted by the Consultant in accordance with sub-clause 3.8.2. conforms to the timing requirements (if any) stated in the Schedules to this General Consultancy Agreement.

3.9. Subcontracting and Assignment

- 3.9.1. The Consultant may not subcontract the whole or any part of the Consultancy Services without the Client's written consent.

- 3.9.2. The Consultant must not assign the Contract or any of the benefits or obligations under the Contract without the Client's written consent.

4. RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

4.1. Performance

The Client with:

- 4.1.1. pay the Consultant in accordance with the Contract;
- 4.1.2. when, and as required under the Contract, provide the Consultant with sufficient records to enable the Consultant to carry out the Consultancy Services;
- 4.1.3. give or cause to be given to the Consultant, timely and reasonably adequate directions, decisions and records relating to the provision of the Consultancy Services by the Consultant;
- 4.1.4. As a proviso to clauses 4.1.2 and 4.1.3 the Client does not in any manner vouch for the accuracy or correctness of the records it might be required to furnish to the Consultant in accordance with clauses 4.1.2 and 4.1.3 above.

5. PAYMENT OF FEES AND DISBURSEMENTS

5.1. Payments

- 5.1.1. Payments to the Consultant shall be in accordance with the provisions of the UMDONI Municipality SCM Guidelines of payments for consultancy services. All amounts quote by the Consultant and accepted by the Client for the provision of Consultancy Services, will, unless expressly stated to the contrary, be taken to be VAT inclusive.
- 5.1.2. A claim for payment by manner of a tax invoice must be submitted by the consultant to the Client on the basis and according to the Procedure described in the Schedules to this agreement.
- 5.2. The Client shall refund to the Consultant the reasonable out-of-pocket expenses incurred by the consultant in providing the services, which are substantiated by vouchers and which have been

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approved by the Client or Project Manager. No expenses in excess of R 1 000.00 shall be incurred by the Consultant which the ambit and scope of this clause without prior written consent of the Client/Project Manager.

- 5.3. All relevant invoices in support of any claim for expenses incurred by the Consultant must be submitted to the Client for settlement thereof within 30(thirty) days from the time when they are incurred.
- 5.4. Should the consultant be aggrieved concerning the amount that is certified or paid to it, the consultant may issue a notice of dispute as is provided for in Clause 14 of this contract.

6. PROJECT MANAGER

- 6.1. There shall be a Project Manager appointed by the Client who shall administer the Contract and oversee the work of the Consultant in its performance of the Consultancy Services.
- 6.2. The Project Manager shall be **Project Management Unit Manager: Technical Services, Mr Sandile Xulu** unless a person appointed officially to act on his/her behalf.
- 6.3. The Consultant must:
 - 6.3.1. liaise with, report to and communicate with the Project Manager on all technical matters relating to this Contract;

7. INTELLECTUAL PROPERTY

- 7.1. Title to and ownership of intellectual property rights (including copyright) in all Contract Material shall upon its creation vest in the Client without need for further assurance. The Consultant shall do all things necessary to perfect the vesting of the Intellectual property rights attaching to the Contract Material in the Client.
- 7.2. The Consultant shall retain the intellectual property rights it may have in any original ideas, equipment, processes or systems created outside the terms of the Contract and used in carrying out the Consultancy Services. Provided that such original ideas, equipment, process or systems so created are disclosed to the Client before hand and at the commencement of this agreement. To this end, all the necessary documents and/or licences must be submitted in hard and soft copy to the Client or the Project Manager, as the case may be. Where necessary, the consultant shall grant or cause to be granted to the Client an irrevocable license to use such intellectual Property rights for any purpose for which the Consultancy Services are provided until the contract is, subject to the provision of clause 2.1.6., terminated.
- 7.3. To the extent that intellectual Property rights in or relating to the contract Material are not capable of being vested in the Client because the consultant does not own that intellectual Property right, the Consultant shall ensure that the Client is irrevocably licensed to use that intellectual Property right until the Contract is, subject to clause 2.16, terminated.

- 7.4. The intellectual property rights vested in the Client pursuant to this clause may be used by the Client only on projects developed for use by the Client.
- 7.5. The Client grants to the Consultant a paid up, nonexclusive, irrevocable license to use the intellectual Property rights in Contract material vested in the Client pursuant to this clause, on the condition that;
- 7.5.1. the Consultant does not act in breach of its obligation of confidentiality under the contract;
- 7.5.2. the Consultant indemnifies and holds harmless the Client and its officers, servants and agents from and against all actions, claims, demands, judgments and any costs,. Damages or losses incurred whatsoever and howsoever arising, out of the Consultant's use of the Contract Material or any part thereof, which may be brought or made against any of them by any person.

8. RECORDS AND CONTRACT MATERIAL

- 8.1. The Consultant must not use records for any purpose other than in the performance of the Consultancy Services and must ensure that no unauthorized persons have access to the records while in the Consultant's possession or control during or after the completion of the consultancy Services.
- 8.2. Upon the expiration or early termination of the Contract, the Consultant must deliver to the Client all Records and Contract Material except that the consultant may retain copies of whatever part of the Contract Material which it may in law be required to retain for its own records.

9. CONFLICT OF INTEREST

- 9.1. If, during the currency of the Contract, a conflict or a risk of conflict of interest arises, because of work undertaken for any person other than the Client, the Consultant undertakes to notify the Client immediately in writing of that conflict or a risk of conflict of interest.
- 9.2. The Consultant must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the currency of the Contract, engage in any activity or obtain any interest which is in conflict with providing the Consultancy Services to the Client. Any such activity must be disclosed in writing to the Client immediately.
- 9.3. Where the Client receives a notice of conflict of interest under this clause, the Client may proceed under clause 13.2 of these General Conditions of Contract.

10. CONFIDENTIAL INFORMATION

The Consultant must;

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- 10.1. keep all Records and Contract Material in a secure location so that no unauthorized person is able to have access to any of them;
- 10.2. ensure that Records and Contract Material are kept confidential as between the Consultant and the Client and are not disclosed to any other person under any circumstances whatsoever except where:
 - 10.2.1. required by law; or
 - 10.2.2. the Client's consent is obtained.
- 10.3. If requested by the Client, the Consultant must provide and must procure from each of its servants, agents and subcontractors engaged in the performance of the consultancy servants, a confidentiality undertaking in a form that is acceptable to the Client.
- 10.4. The Consultant indemnifies the Client against any actions, claims, demands, judgements and any costs, damages or losses incurred whatsoever or howsoever arising, which is in any way connected with a breach of the obligations of the Consultant under this clause.
- 10.5. The Client must except as required by law and subject to the Contract, treat as confidential, all information so designated in writing by the Consultant.
- 10.6. The Client may, at any time., requires the Consultant to return any material containing, or relating to the confidential information disclosed pursuant to the terms of the agreement and may, in addition request the consultant to furnish a written statement to the effect that, upon such return, the Consultant has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 10.7. The Client may at any time, request the consultant to destroy any material containing, pertaining or relating to the confidential information disclosed pursuant to the terms of this agreement and furnish the Client with a written statement to the effect that such material has been destroyed unless the destruction of that material is proscribed by any law including the common law.
- 10.8. The Consultant shall comply with any request in terms of this clause within 3 (three) days of the date of such a request.
- 10.9. This clause survives the termination of the Contract.

11. NON SOLICITATION

- 11.1. The Consultant or any person within whom it is directly or indirectly associated or in which it has any interest, will, either alone or jointly, for the duration of this agreement and for a 12 (twelve) month period thereafter-
 - 11.1.1. not encourage or entice or persuade or induce any employee of the Client to terminate his employment with it;

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- 11.1.2. not furnish any information to any prospective employer of such an employee of the Client, or give any information or advice to any such employee, that is calculated to lead to or that could reasonably result in, his terminating his employment and his seeking employment by, or seeking to become directly or indirectly interested or associated with any other person, undertaking, venture, association, concern or firm.

12. DIRECTION AND VARIATION

12.1. Direction by Client

Except where the Contract otherwise proves, a direction may be given orally by the Client but the Client shall, as soon as practicably possible, confirm it in writing.

12.2. Variations

Without derogating from the Provisions set out under clause 15 below:

- 12.2.1. The Client may, by written notice to the consultant, direct the Consultant to vary the nature, scope or timing of the Consultancy Services (and including the omission or reduction of any part of the Consultancy Services) and the consultant shall be bound to comply with that direction.
- 12.2.2. If the Client gives a notice in terms of clause 12.2.1, the fees shall continue to be calculated on the same basis as before the notice.
- 12.2.3. If the basis for the calculation of the fees is affected by a notice in terms of clause 12.2.1, then agreement will have to be reached between the Parties on the new basis for calculating the fees.
- 12.2.4. The Client shall not be liable for payment to the consultant for any compensation for loss of profits or for any other reason.

12.3. Errors and Omissions in the Contract Material

- 12.3.1. The consultant shall correct errors or omissions in the Contract Material at the Consultant's own expense.
- 12.3.2. Where, owing to circumstances beyond the reasonable control or anticipation of the Consultant, the Consultant is required to alter, add, or delete contract Material previously submitted and accepted by the Client, the Consultant shall inform the Client and seek direction.

13. SUSPENSION, DEFAULT, TERMINATION

13.1. Suspension

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- 13.1.1. The Client may, in the event of unsatisfactory performance or conflict of interest at any time by prior written notice to the consultant, suspend the carrying out of the Consultancy Services or any part thereof for 7 (seven) days in order to afford the Consultant the opportunity to rectify the cause for the

unsatisfactory performance or conflict of inters., In the event that the consultant fails to remedy the situations as envisaged herein, then the provisions of the terms below shall apply, until such time as the Client may determine.

- 13.1.2. Subject to the next paragraph, if fees or expenses have not been agreed in advance, the Client must pay to the Consultant the fees and the expenses reasonably incurred by the Consultant in carrying out the consultancy Services to the date of suspension. The Client shall not be liable to compensate for any loss of profits or any other loss.

- 13.1.3. The suspension shall terminate when the Client gives the consultant reasonable notice to re-commence carrying out the consultancy Services that have been suspended.

13.2. Termination due to Default by Consultant

- 13.2.1. If the Consultant commits a breach of Contract, the Client may suspend payment under the Contract and give to the consultant a written notice to rectify.

13.2.2. A notice to rectify must:

- 13.2.2.1. state that it is as notice given under this sub-clause of these Conditions;

- 13.2.2.2. specify the alleged breach in detail;

- 13.2.2.3. specify the date by which the Consultant must respond to this notice which date shall not be less than 7 (seven) days after the date of the notice, and, if, by the time specified in the notice to rectify, the Consultant fails to propose steps to remedy the breach that are satisfactory to the Client or fails to actually remedy the breach to the satisfaction of the Client, the Client may, by further written notice, terminate the contract and claim any other remedies that are available to the Client in law;

13.3. Termination on Notice

- 13.3.1. The Client may terminate the Contract at any time by giving the consultant at least 14 (fourteen) days prior written notice.

- 13.3.2. The period of this notice shall run from the date upon which the notice is received by the Consultant.

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- 13.3.3. If the Contract is terminated pursuant to this sub-clause, the Client must pay to the Consultant the fees and the expenses reasonably incurred by the Consultant in Carrying out the Consultancy Services to the date of termination together.
- 13.3.4. The Client shall not be liable for payment to the Consultant for any amount in excess of the amount due and payable for the services already provided by the Consultant and, specifically, no compensation for loss of profits or any other loss shall be payable by the Client.

13.4. Termination on Default by Client

- 13.4.1. Should the Client fail to perform its obligations of payment in terms of this agreement, the Consultant may, on written notice, require the Client to pay within 14 (fourteen) days of the date of the receipt of the notice.
- 13.4.2. Should the Client fail to pay in that time, the Consultant may terminate this agreement.

13.5. Effect of Termination

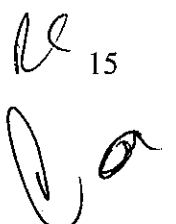
- 13.5.1. In the event that the Consultant is a joint venture or a consortium upon termination of this Contract, the Consultant might at the discretion of the Client be held liable jointly and severally for whatever expenses or damages the Client should be entitled to claim in law and/or in terms of this agreement.
- 13.5.2. On the date of termination, the rights and obligations of the Parties described in this contract shall cease.
- 13.5.3. The Consultant will be obliged to hand back all the records and Contract Material that it made use of, or was otherwise in possession and control of, throughout the duration of this Contract.

14. DISPUTE RESOLUTION

14.1. Notice of Dispute

- 14.1.1. If a dispute between the Parties arises out of or in connection with the Contract, then either Party shall give the other Party a notice of dispute identifying and providing details of the dispute.
- 14.1.2. Notwithstanding the existence of a dispute, the Parties shall, subject to clause 13, continue to perform their duties in terms of the Contract.

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14.2. Mediation

- 14.2.1. Within 7 (seven) days after receiving a notice of dispute, or such other period as agreed between the Parties, the Parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each Party shall be represented by its most senior executive or official who shall endeavour to resolve the dispute within 5 (five) days after having been referred to them. All aspects of every such conference except the fact of occurrence shall be kept confidential by the Parties.

14.3. Arbitration

- 14.3.1. If the dispute has not been resolved within 5 (five) day period mentioned in clause 14.2.1 above, then that dispute shall be and is hereby referred to arbitration.
- 14.3.2. The arbitrator shall be appointed by agreement of the Parties. However, if, within 5(five) days of the dispute being referred to expert determination, the Parties have not agreed upon an expert, the expert shall be nominated in terms of the Arbitration Act No 42 of 1965.
- 14.3.3. Except where the Parties otherwise agree in writing:
- 14.3.3.1 each Party shall bear its own costs and pay one half of the expert's fees and expenses;
- 14.3.3.2. the determination of the expert shall be final and binding on the Parties.
- 14.3.4. This clause shall be severable from the rest of this Contract and it shall therefore survive h termination and expiration of the Contract.

15. AMENDMENTS AND WAIVER

- 15.1. No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, other document issued or executed pursuant to or in terms of this agreement and not settlement of any disputes arising under this agreement and not extension of time, waiver or relaxation or suspension of any of the provisions, terms or rights of this agreement or of any agreement or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 15.2. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppels against any Party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 15.3. A waiver by either Party shall not prejudice its rights in respect of any subsequent breach of the Contract by the either Party. Any failure by Party to enforce any clause of h Contract or any

forbearance, delay or indulgence granted by either Party to the other will not be construed as a waiver of the rights under the Contract.

16. GOVERNING LAW

- 16.1. The Contract shall be governed by and construed in accordance with the laws of South Africa.

17. ENTIRE AGREEMENT

- 17.1. The Contract constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements, arrangements and understandings relating to the subject matter of this Contract.

18. NOTICES AND DOMICILIA

- 18.1. The Parties choose as their respective domicilia citandi et executandi for the purpose of legal proceedings the following physical addresses, and for the purposes of giving or sending any notice provided for or necessary in terms of this agreement, the said domicilia as well as the following telefax numbers-

18.1.1. Client - P O Box 19, Scottburgh, 4180
Cnr Bram Fischer and Williamson Streets, Scottburgh, 4180

18.1.2. Consultant - 42A Montgomery Drive, Athlone, Pietermaritzburg, 3201

18.2.1 Telephone number- Client – 039 976 1202
Consultant – 033 345 4125

- 18.3. A Party may change its domicilium to any other physical address (and may change its telefax number to any other telefax number) by written notice to the other Parties to that effect. Such change will be effective 7 (seven) days after receipt of notice thereof.

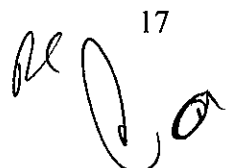
18.3.1. All notices to be given in terms of this agreement will –

18.3.2 be given in writing in the English language; and

18.3.3 be delivered by hand, pre-paid postage in a letter addressed to the domicilium citandi of the addressee or sent by telefax to the telefax number of the addressee set out in this contract.

18.4. Any notice so given –

18.4.1. if hand delivered before 16h30 on a business day, will rebuttably be presumed to have been received on the day of delivery. Any notice hand delivered after 16h30 on a business

17


day, or on a day which is not a business day, will rebuttably be presumed to have been received on the immediately following business day;

18.4.2. If sent by pre-paid postage, will rebuttably be presumed to have been received 2 (two) days after deposit in the mail; and

18.4.3. If sent by telefax before 16h30 on a business day, will rebuttably be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after 16h30 on a business day, or on a day which is not a business day, will rebuttably be presumed to have been received on the immediately following business day.

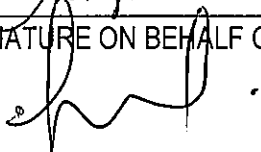
18.5. Any notice written in the English language which is actually received by the Party to whom the written notice is addressed will be deemed to have been properly given and received, notwithstanding that such written notice has not been given in accordance with the other provisions of this clause.

19. Signatures

SIGNED AT PIETERMARITZBURG on this 03 day of AUGUST 2023



SIGNATURE ON BEHALF OF BI INFRASTRUCTURE CONSULTANTS (PTY) LTD

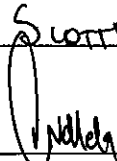


WITNESS



WITNESS

SIGNED AT Stellenbosch on this 03 day of OCTOBER 2023



SIGNATURE ON BEHALF OF UMDONI MUNICIPALITY



WITNESS

WITNESS

18



ANNEXURE A

SCHEDULE

This **schedule** contains all variables, amendments and/or special conditions pertaining to this **agreement**, which variables and/or special conditions shall take precedence over the terms and conditions of this **agreement**. Spaces requiring information shall be filled in or shown as "not applicable" (or deleted) and not left blank. Where insufficient space is provided the information should be annexed hereto and cross-referenced to the applicable clause of this **schedule**. Square bracketed references in *italics* refer to clauses in this **agreement**

A.1 CONTRACTING PARTIES

Client [1.1.3;1.2]	Umdoni Municipality			
Postal address	P.O BOX 19			
	SCOTTBURGH			
	Country	SCOTTBURGH	Code	4180
	Tel	039 976 1202	Fax	039 976 0381
	e-mail	mmoffice@umdoni.gov.za		
Physical address	UMDONI MUNICIPALITY			
	CNR BRAM FISHER & WILLIAMSON STREET, SCOTTBURGH			
	Country	SCOTTBURGH	Code	4180
Consultant [1.1.7;1.2]	BI Infrastructure Consultants (Pty) Ltd			
Postal address	42A Montgomery Drive			
	Athlone, Pietermaritzburg			
	Country	South Africa	Code	3201
	Tel	033 345 4125	Fax	033 345 3883
	e-mail	fortune@biiconsultants.co.za		
Physical address	42A Montgomery Drive			
	Athlone, Pietermaritzburg			
	Country	South Africa	Code	3201

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12
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A.2 EFFECTIVE DATE

[4.1]

This agreement shall be effective from 17 May 2023

(Date)

A.3 CLIENT'S REPRESENTATIVE

Client's representative

[1.1.4;5.1]

MUNICIPAL MANAGER: MRS T.C NDLELA

(name)

Postal address

P.O BOX 19

SCOTTBURGH

Country SCOTTBURGH

Code 4180

Tel 039 976 1202

Fax 039 976 0381

e-mail mmoffice@umdoni.gov.za

Physical address

UMDONI MUNICIPALITY

CNR BRAMFISCHER & WILLIAMSON
STREET, SCOTTBURGH

Country SCOTTBURGH

Code 4180

A.4 PRINCIPAL CONSULTANT

Principal consultant

[1.1.11]

BI Infrastructure Consultants (Pty) Ltd

(name)

Postal address

42A Montgomery Drive, Athlone

Pietermaritzburg

Country South Africa

Code 3201

Tel 033 345 4125

Fax 033 345 4125

e-mail fortune@biiconsultants.co.za

Physical address

42A Montgomery Drive, Athlone

Pietermaritzburg

Country South Africa

Code 3201

A.5 PRINCIPAL AGENT

Principal agent

[1.1.10]

BI Infrastructure Consultants (Pty) Ltd

(name)

Postal address

42A Montgomery Drive, Athlone

Pietermaritzburg

Country RSA

Code 3201

Tel 033 345 4125

Fax 033 345 3883

e-mail fortune@biiconsultants.co.za

Physical address

42A Montgomery Drive, Athlone

20

Pietermaritzburg

Country RSA

Code 3201

A.6

[1.1.8]

OTHER CONSULTANTS

Architect

N/A

(name / to be appointed / not applicable)

Civil engineer

N/A

(name / to be appointed / not applicable)

Electrical engineer

N/A

(name / to be appointed / not applicable)

Fire consultant

N/A

(name / to be appointed / not applicable)

Health & safety consultant

N/A

(name / to be appointed / not applicable)

Interior designer

N/A

(name / to be appointed / not applicable)

Landscape architect

N/A

WILL (name / to be appointed / not applicable)

Mechanical engineer

N/A

(name / to be appointed / not applicable)

Project manager

N/A

(name / to be appointed / not applicable)

Quantity surveyor

N/A

(name / to be appointed / not applicable)

Structural engineer

N/A

(name / to be appointed / not applicable)

Wet services consultant

N/A

(name / to be appointed / not applicable)

Geotechnical Engineers

(Service/Consultant)

(name / to be appointed / not applicable)

Environmental Consultant

(Service/Consultant)

(name / to be appointed / not applicable)

(Service/Consultant)

(name / to be appointed / not applicable)

(Service/Consultant)

(name / to be appointed / not applicable)

RC
Cor

A.7 PROJECT*[1.1.12; 2.1; 2.2]*

Name and description	<u>Electrical Engineering Consultant INEP Project In Ward 11</u> <u>Professional services for Concept and Viability, Design Development, Documentation and Procurement, Contract Administration and Close-Out</u>
Site identification	<u>The project is located in Ward 11 of Umdoni local Municipality. The project is located in</u>
Site Reference	Lat : _____ Long : _____

A.8 DOCUMENTS*[1.1.1; 1.9]*

This agreement

Annexure A:	<u>The schedule</u>
Annexure B:	<u>Scope of services</u>
Annexure C:	<u>Fee Appraisal & Disbursement Plan</u>
Annexure D:	<u>Letter of Appointment</u>
Annexure E:	_____

Signed original documents held by Umdoni local Municipality

A.9 LIMIT OF LIABILITY*[7.2.]*Select one of the following:

The proceeds of any claim against the professional indemnity insurance	No
	(Yes/No)
Specific amount (insert amount)	NA
An amount equals the fees payable by the client to the consultant in terms of 9.1	R10 000 000.00
	No

A.10 PROFESSIONAL INDEMNITY INSURANCE*[8.1]*

Party responsible for professional indemnity insurance Leppard Underwriting



(client/consultant)

Limit of indemnity per claim

R 10 000 000.00

Limit of indemnity in the aggregate

R10 000 000.00

Non-claimable amount (excess/deductible)

N/A

The renewal date of the policy is

30 June 2024

(Date)

A.11 PROFESSIONAL FEES

[9.1]

The professional fees shall be

R 2 025 000.00

(TWO MILLION AND TWENTY-FIVE THOUSAND RANDS)

This fee includes percentage discount as the attached "Fee Breakdown Structure and Disbursements Letter"

R 2 025 000.00

including VAT

A.12 APPORTIONMENT OF PROFESSIONAL FEES

[9.1; 13.1]

The professional fees shall be apportioned as follows

ECSA Tariff of Fees (2015),

A.13 DISBURSEMENTS

A.13.1 Method of reimbursement

[11.1]

Included in professional fees

No
(Yes/No)

A fixed amount of

Proven cost

No
(Yes/No)

A.13.2 Expenses

[11.1.1; 11.1.2; 11.1.3]

Amendments to expenses listed:

NA

A.13.3 Other expenses

[11.1.4]

NA

excluding tax

A.13.4 Payment

[11.2]

Amendments to terms of payment:

.....

.....

.....

A.14 INTERESTS OF CONSULTANT

[16.1]

NA

.....

.....

A.15 EQUIPMENT AND FACILITIES TO BE PROVIDED BY CLIENT

[5.6]

NA

.....

.....

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.....

.....

.....

.....

.....

A.16 APPLICABLE LAW

[1.5]

The law applicable to this agreement shall be that of South Africa

(country)

A.17 MEDIATOR NOMINATED BY

[18.2]

Name TO BE ADVISED

Address

Country

Code

Tel

Fax

e-mail

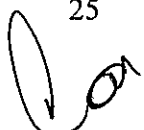
A.18 ARBITRATOR NOMINATED BY

[18.9]

Name TO BE ADVISED

25

AK



Address

Country

Code

Tel

Fax

e-mail

A.19
[18.11]

ARBITRATION RULES

TO BE ADVISED

A.20
[1.1.13]

AMENDMENTS AND/OR SPECIAL CONDITIONS

NA

A.21 SIGNATURES OF THE CONTRACTING PARTIES

[1.1.9]

Thus, done and signed at

SCOTTBURGH

on 03 OCTOBER 2023

Signature of Representative

UMDONI MUNICIPALITY (KZN)

for and on behalf of the **client** who by
signature hereof warrants authorisation
hereto

MUNICIPAL MANAGER

Capacity of signatory

As witness

Thus, done and signed at

SCOTTBURGH

on 04 OCTOBER 2023

Signature of Representative

BI INFRASTRUCTURE CONSULTANTS

for and on behalf of the **consultant** who
by signature hereof warrants
authorisation hereto

DIRECTOR

Capacity of signatory

As witness

SCHEDULE 1: SCOPE OF WORKS AND REMUNERATION

SCOPE PROVISIONS

The following documents form part of the agreement: -

Agreements

Specific Provisions

Conditions of agreement

Schedule 1 : Scope of works and remuneration

Schedule 2 : Letters of appointment

Schedule 3 : Environmental and Safety

1. Professional Indemnity Insurance

Copy of the PI is attached. (Please note that the PI is limited to twice the fee value)

It should be noted that in the event of a % (percentage) rebate being given on fee remuneration the professional indemnity insurance may at his discretion reduce PI cover by a similar % (percentage) rebate.

2. Scope of Service

2. Scope of services

- 2.1 In terms of this contract, ENGINEERING undertakes to act as project manager to deliver the following facility to the Client, UMDONI Municipality on a project by procuring all goods and services, and managing all service providers, with an express intention of achieving the Client's objectives in terms of scope of works, time and costs of the project.
- 2.1.2 ENGINEERING is responsible for the delivery of the completed project detailed below,
 - 2.1.2.1 Project name: **ELECTRICAL ENGINEERING CONSULTANT INEP PROJECT IN WARD 11**
 - 2.1.2.2 Project Location: Ward 11
- 2.1.3 Engineering shall prepare a detailed project plan, with clear times lines and deliverable, and submit same to the Client, Umdoni Municipality within seven days of signing this contract.
- 2.1.4 Engineering undertakes to provide the following project management services, together with any services incidental thereto:
 - a) Establish the location and points of supply of ESKOM network for the connection
 - b) Select and appoint an ESKOM approved marketing Consultant to compile Customer information for the design and loading to the ESKOM Data Base.

- c) Preliminary design and submission
- d) Eskom TEF approval
- e) Submission to Eskom for Final Design approval
- f) Arrange site hand over
- g) Kick-off meeting
- h) Book outage for the project
- i) Construction program and implementation
- j) All work as per the approved design specifications to be undertaken prior to hand over to
ESKOM
- k) Site
inspe
ction
- l) Energizing and hand over
- m) Monthly progress reporting Submit payment certificates to Client for approval and payment
- n) Close-out report submission

2.1.5 Engineering shall perform the duties of –

2.1.5.1 Agent in respect of each consultancy agreement; and

2.1.5.2 Principal agent in respect of each building agreement.

2.1.6 The duties of agent and principal agent must be expressly set out in each consultancy and building agreement and must not exceed the services listed above.

2.1.7 Engineering shall not, at any stage of execution of this agreement act as an employee of the Client, Umdoni Municipality.

2.1.8 Engineering shall not delegate the duties of principal agent to a professional service provider without the prior written consent of the Client, Umdoni Municipality.

2.1.9 In carrying out the Services, Engineering must –

2.1.9.1 Consult with the Client, Umdoni Municipality;

2.1.9.2 Obtain the Client, Umdoni Municipality's sign off on all designs, specifications, appointments and all other material aspects of the project;

2.1.9.3 Comply with the Client, Umdoni Municipality's instructions from time to time; and

2.1.9.4 Comply with all applicable laws and ensure that all service providers do likewise.

2.2 Appointment of other professionals

2.2.1 In execution of the Scope of Services under this contract, the Client, Umdoni Municipality will appoint other professionals in the built environment. Such appointments may be for:

2.2.1.1 Consultants such as architects, quantity surveyors, consulting engineers and technical service providers.

2.2.2 The professionals appointed for purposes outlined above, shall enter into individual and separate contracts with the Client, Umdoni Municipality.

2.2.2.1 Engineering shall not, under any circumstances, appoint or enter into contracts with professional teams envisaged above.

2.2.2.2 Your appointment will not be limited to the initial budget but to future allocations as funding sources become available in line with the masterplan for this project since the appointment is on turnkey bases.

3

Remuneration

3.2 The remuneration or method of determining the payment to be paid to the Consulting Engineer for providing the services required in terms of this contract agreement and for reimbursement for all expenses and cost incurred in performing the services shall be in accordance with the provision of the ECSA guidelines of payment for consulting services read in conjunction with latest guideline scope of services and tariff of fees for persons registered with the Engineering Profession Act 46 of 2000 as applicable at the time of signature of the Form of Agreement, shall be the basis for determining the remuneration subject to the following additional or alternative remuneration conditions:

The fee excludes disbursement, which will be claimed separately using the following rates (Exc VAT):

Travel @ R4.75 per km

Photocopies @ 60c per page

Printing A4 @ R1.50 per sheet

Printing A3 @ R5.50 per sheet

Plotting A0 @ R102.00 per sheet

Plotting A1 @ R82.00 per sheet

Faxes @ R2.70 per page

- 3.3 All disbursements not listed will be proven cost plus 10%
- 3.4 All payments to be made electronically into the account number as indicated on the invoice submitted.
- 3.5 Any dispute shall not provide valid reasons for non-payment of fees due.

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SCHEDULE 2: LETTERS OF APPOINTMENT

UMDONI MUNICIPALITY

THE J.E.W.E.L OF THE SOUTH COAST



Postal Address:

P O Box 19
Scottburgh
4180
Tel: 039 976 1202

Physical Address:

Cnr Williamson & Bram Fischer Streets
Scottburgh
4180
Fax: 039 976 2194

Our Ref: INEP PROJECT IN WARD 11

Enquiries: Mr S Xulu

E-mail: sandilex@umdoni.gov.za

16 May 2023

BI INFRASTRUCTURE CONSULTANTS

The Director/s: Mr. FORTUNE DUBE

BI INFRASTRUCTURE CONSULTANTS

PANEL OF PROFESSIONAL ELECTRICAL ENGINEERS, 42A MONTGOMERY DRIVE, ATHLONE
PIETERMARITZBURG
3201

Contact: 082 807 5338 / 033 345 4125

Email: fortune@biiconsultants.co.za

Dear Sir/Madam

**ALLOCATION OF A PROJECT: BID 04/2022 PANEL OF PROFESSIONAL CIVIL ENGINEERING
CONSULTANT**

We refer to the abovementioned bid.

This letter serves to confirm that **BI INFRASTRUCTURE CONSULTANTS** has been selected to manage the following project;

- **ELECTRICAL ENGINEERING CONSULTANT FOR INEP PROJECT IN WARD 11**

There will be a service level agreement (SLA) between Umdoni Municipality and **BI INFRASTRUCTURE CONSULTANTS** that will be signed before commencement of work.

Yours Faithfully

Mrs T C Ndlela

Municipal Manager

AC 32

SCHEDULE 3: ENVIRONMENTAL AND SAFETY

In terms of the National Environmental Management Act, as part of the services of the Consulting Engineer is to ensure that the environmental issues are adhere to with regarding the Environmental Impact Assessment and Scoping report where needed from the Department of Agriculture, Environmental & Rural Development.

Safety issue be taken to into account where carrying out designs as in terms of the Health and Safety Act 85 of 1993 for public liability.

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ANNEXURE A: BILL OF QUANTITIES

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Umdoni Ward 11 Prelim Design BOQ							
Item	QTY	Unit	Supply	Supply Total	Install	Install Total	Total
500kVA MinisubTRFR	7	No	R650 000,00	R4 550 000,00	R1 000,00	R7 000,00	R4 557 000,00
MV Surge Arrestors	12	No	R850,00	R10 200,00	R200,00	R2 400,00	R12 600,00
Neurtal S/A	4	No	R550,00	R2 200,00	R200,00	R800,00	R3 000,00
MV /LV Earth	4	No	R3 000,00	R12 000,00	R1 000,00	R4 000,00	R16 000,00
35ABC	1140	m	R60,00	R68 400,00	R5,00	R5 700,00	R74 100,00
95 XLPE 22kV	2000	m	R1 200,00	R2 400 000,00	R110,00	R220 000,00	R2 620 000,00
Term kits	4	No	R10 000,00	R40 000,00	R4 500,00	R18 000,00	R58 000,00
RMU 3R Incl plinth	1	No	R500 000,00	R500 000,00	R30 000,00	R30 000,00	R530 000,00
5M Kicker poles	142	No	R200,00	R28 400,00	R75,00	R10 650,00	R39 050,00
9m LV Poles	70	No	R500,00	R35 000,00	R100,00	R7 000,00	R42 000,00
12m MV Poles	10	No	R2 100,00	R21 000,00	R150,00	R1 500,00	R22 500,00
Airdac 6mm	10000	m	R70,00	R700 000,00	R5,00	R50 000,00	R750 000,00
2W PTB	2	No	R600,00	R1 200,00	R120,00	R240,00	R1 440,00
4W PTB	11	No	R720,00	R7 920,00	R120,00	R1 320,00	R9 240,00
8W PTB	40	No	R1 220,00	R48 800,00	R120,00	R4 800,00	R53 600,00
Trenching	2000	m		R0,00	R150,00	R300 000,00	R300 000,00
Meters 20A	311	No	2500	R777 500,00	500	R155 500,00	R933 000,00
Data Concentrator	4	No	R10 000,00	R40 000,00	R2 000,00	R8 000,00	R48 000,00
TOTAL							R10 069 530,00
15% Other Items							R1 510 429,50
Sub Total 1							R11 579 959,50
10% Contingency							R1 157 995,95
Sub Total 2							R12 737 955,45
15% VAT							R1 910 693,32
GRAND TOTAL							R14 648 648,77

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