

Part C1.2 Contract Data

The conditions of contract are selected from the NEC3 Professional Services Contract, April 2013.

Each item of data given below is cross-referenced to the clause in the NEC3 Professional Services Contract which requires it.

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Part one - Data provided by the *Employer*

1 General

The *conditions of contract* are the core clauses and the clauses for main Option:

A: Priced contract with activity schedule

dispute resolution Option W1: Dispute resolution procedure
and secondary Options

X2 Changes in the law

X7: Delay damages

X9: Transfer of rights

X10: *Employer's Agent*

X11: Termination by the *Employer*ⁱ

X13: Performance Bond

X18: Limitation of liability

Z: *Additional conditions of contract* are clause Z1 to Z30, as applicable

of the NEC3 Professional Services Contract, April 2013.

10.1	The <i>Employer</i> is (Name):	Airports Company South Africa Limited SOC
	Address:	Airports Company South Africa Cape Town International Airport Private Bag X 9002 Cape Town 7525
	Tel No:	021 937 1200
11.2(9)	The <i>services</i> are	As per the scope of work and scope of service per Appointed discipline.
11.2(10)	The following matters will be included in the Risk Register <ul style="list-style-type: none"> • Availability of As-Built drawings / information • Access to Site (approvals and permits, police clearance required) • Statutory and ACSA Approvals • Site Constraints and constructability • Deviations from Programme & cash flow • Notification of claims • Financial & Procurement • Phased completion of services 	

11.2(11)	The Scope is in the document called Part 3: Scope of Work	
12.2	The <i>law of the contract</i> is	the law of the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 weeks
13.6	The <i>period for retention</i> is	N/A
2	The Parties' main responsibilities	
25.2	The <i>Employer</i> provides access to the following persons, places and things	
	access to	access date
	1 Project Information	Upon acceptance of the Programme
	2 Site Access	Upon approval of the airport access permits
3	Time	
31.2	The <i>starting date</i> is:	Upon signing of the contract by the Employer
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	60 months after the start date.
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	
	Condition to be met	key date
	1 Stage 1 Report	As per accepted programme
	2 Stage 2 Report	As per accepted programme
	3 Documentation and Procurement	As per accepted programme
	4 Contract Management Services	As per accepted programme
	5 Construction Monitoring Services	As per accepted programme
	6 Handover and Close Out	As per accepted programme
31.1	The <i>Consultant</i> is to submit a first programme	4 weeks upon signing of the contractor by the Employer
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	4 weeks.
4	Quality	
40.2	The quality policy statement and quality plan are provided within	4 weeks upon signing of the contract by the Employer.
41.1	The <i>defects date</i> is	52 weeks after Completion of the whole of the <i>services</i> .
5	Payment	
50.1	The <i>assessment interval</i> is	25th day of each successive month.
51.1	The period within which payments are made is	4 weeks.
51.2	The <i>currency of this contract</i> is the	South Africa Rand (ZAR)

51.5	The <i>interest rate</i> is	1% above the publicly quoted prime rate of interest (calculated on a 365-day year) charged from time to time by Nedbank Bank of South Africa for amounts due in Rands; and the exchange rate published by the South African Reserve Bank from time to time for amounts due in other currencies.
6	Compensation events	No data required for this section of the <i>conditions of contract</i> .
7	Rights to material	No data required for this section of the <i>conditions of contract</i> .
8	Indemnity, insurance and liability	
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are	
	Event	Cover Period of insurance
	failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Refer to Annexure 1 Minimum of 5 years
	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	Refer Annexure 1 Minimum of 5 years
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 5 years
81.1	The <i>Employer</i> provides the insurances	Refer to Insurance Schedule, Annexure 1
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Refer to Insurance Schedule, Annexure 1
	The <i>Consultant</i> provides these additional insurances.	Refer to Insurance Schedule, Annexure 1
9	Termination	Refer to Secondary Clause X11.
10	Data for main Option clause	
A	Priced contract with activity schedule	
21.3	The <i>Consultant</i> prepares forecasts of the total of the <i>expenses</i> at intervals of no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	TBC
	Address	
	Tel No.	
	Fax No.	

e-mail

W1.1	The <i>Adjudicator</i> is	the person selected by the Party intending to refer the dispute, from the Panel of Adjudicators listed in Annexure C.1 of this Contract Data.
W1.2(3)	The <i>adjudicator nominating body</i> is	the Chairman of the Johannesburg Society of Advocates, or his successor or his nominee.
W1.4(2)	The tribunal is	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	as set out in the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Cape Town, South Africa
	The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is the Chairman of the Association of Arbitrators (Southern Africa)	The Chairman for the time being of the Arbitration Foundation of South Africa (AFSA) (or its successor body) or his nominee.
12	Data for secondary Option clauses	
X2	Changes in the law	
X2.1	The <i>law of the project</i> is	The law of the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
X7	Delay damages	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	Amount per day is 0.05% up to the maximum of 10% of the total contract value.
X10	The Employer's Agent	
X10.1	The <i>Employer's Agent</i> is	
	Name:	
	Address:	
	The authority of the <i>Employer's Agent</i> is	Includes but not limited to the following: <ul style="list-style-type: none"> • To manage the project on behalf of the Employer. • To assess and process all invoices payable by the Employer. • It is the Employer's sole discretion to amend the authority of the Employer's Agent under this contract through prior written communication to the Consultant.
X11	Termination by Employer	Terminate the Consultant's obligation to Provide the services for a reason not stated in this contract by notifying the Consultant.
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.00 Nil – Neither Party is liable to the other for any consequential or indirect loss, including but not limited loss of profit, loss of income or loss of revenue.

X18.2	The Consultant's total liability to the Employer for defects due to his design which are not listed on the Defects Certificate is limited to	The total of the incurred losses and/or damages caused to the property
X18.3	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to	The total of the incurred losses and/or damages caused to the property

Z Additional conditions of contract

The *additional conditions of contract* are

AMENDMENTS TO THE CORE CLAUSES

Z1 Interpretation of the law

Z1.1 Add the following at the end of core clause 12.3: Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, *the Project Manager, the Supervisor* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z2 Add the following at the end of core clause 12:

Z2.1 In this contract:

Z2.1.1 references to any Party to the Contract include its successors or permitted assigns;

Z2.1.2 references to the *Consultant* include the obligations of its personnel;

Z2.1.3 the references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any works under this Contract;

Z2.1.4 references to this Contract and any deed, Contract or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

Z2.1.5 references to a "person" include a natural person, company or any other artificial person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

Z2.1.6 references to "month" shall be to a calendar month;

Z2.1.7 headings are for convenience only and will not be taken into consideration in the interpretation of the Contract;

Z2.1.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a working day, in which event the last day shall be the next succeeding working day;

Z2.1.9 any provision in Contract that is or may become illegal, invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability in such jurisdiction and shall be treated as severed from the balance of Contract in such jurisdiction, without invalidating the remaining provisions of Contract in such jurisdiction or affecting it in any other jurisdiction;

Z2.1.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

Z2.1.11 the rule of construction that if general words or terms are used in association with specific words or terms that are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;

- Z2.1.12 the rule of construction that the Contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of Contract shall not apply;
- Z2.1.13 words and abbreviations that have well known technical or trade meanings are used in the Contract in accordance with such recognized meanings;
- Z2.1.14 references to a "*subsidiary*" or a "*holding company*" shall be references to a direct or indirect subsidiary or holding company as defined in the law of the jurisdiction of the place of incorporation of the company that has a subsidiary or holding company and "*affiliate*" is any company that is under common control with such subsidiary or holding company;
- Z2.2 Time is of the essence in the performance of the parties' respective obligations.

Z3 Early Warning: add the following at the end of core clause 16.2:

The Consultant ensures that a sub-consultant attends risk reduction meeting if its attendance would assist in deciding the actions to be taken.

Z4 The Consultant's obligations: Delete core clause 21 and replace with the following:

- Z4.1 The *Consultant* Provides the *Services* in accordance with the *Scope* and with due expedition and without delay.
- Z4.2 The *Consultant's* obligation is to use the skill, care and diligence that is required of a professional providing similar services. The *Consultants* observes and/or exercise the degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced *Consultant* in relation to his practices, methods, techniques, specifications and/or standards (whether in respect of design, engineering, construction, performance, safety, workmanship, equipment, components or otherwise) engaged in the same type of undertaking under the same or similar circumstances and conditions to the *Services*.
- Z4.3 The *Consultant* represents that he is and ensures that he is at all times fully experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the *Services* in terms of this contract.
- Z4.4 The *Consultant* warrants that he has satisfied himself, prior to the Contract Date, as to the completeness, sufficiency and accuracy of all information provided to him as at the Contract Date.

Z5 Sub-consulting

Add the following as a new core clause 24.4: "The *Consultant*, within five days of request by the *Employer*, provides proof to the *Employer* that the *Consultant's* payment obligations towards its sub-consultants have been discharged. Failure by the *Consultant* to provide such proof to the satisfaction of the *Employer* entitles the *Employer* to certify payment directly to any such sub-consultant and the *Consultant* has no recourse to recover such amounts from the *Employer*. Such direct payment does not create privity of contract between the *Employer* and such sub-consultant. The *Employer* may set-off such direct payment from the amounts due to the *Consultant*."

Z6 Add the following as a new core clause 26: Procedure for acceptance of the Consultant's Design Documents

- Z6.1 If the Consultant assumes any design responsibility, then the *Consultant* submits the *Consultant's* Design Documents to the *Employer* for acceptance at the times and in the manner and format stated in the *Scope*. For the purposes of this clause, the "**Consultant's Design Documents**" are the drawings, design details and specifications of work, Plant and Materials prepared by the *Consultant* for the works.
- Z6.2 The *Employer* returns each *Consultant's* Design Document to the *Consultant* marked either 'A' (accepted), 'B' (accepted with comments) or 'C' (rejected). If the *Employer* marks a *Consultant's* Design Document 'B' or 'C', he states his reasons. A reason for not accepting a *Consultant's* Design Document is that it does not comply with:
- Z6.2.1 the *Scope*;

- Z6.2.2 any previous *Consultant's* Design Documents which the *Employer* has returned marked 'A', or the *Employer* has returned marked 'B' and the *Consultant* has amended to incorporate the *Employer's* comments;
- Z6.2.3 the applicable laws and regulations; or
- Z6.2.4 any other provision of this contract.
- Z6.3 The *Employer* responds to the *Consultant* in accordance with clause Z6.2 above as soon as practicable. The *Consultant's* Design Documents shall not proceed to the next stage of the design process without the necessary response from the *Employer*, which response shall not be unreasonable delayed or withheld.
- Z6.4 Where a *Consultant's* Design Document is returned marked 'A', the *Consultant* proceeds with the relevant work in accordance with the *Consultant's* Design Document.
- Z6.5 Where a *Consultant's* Design Document is returned marked 'B', the *Consultant* amends the *Consultant's* Design Document to incorporate the *Employer's* comments and submits the *Consultant's* Design Document as so amended to the *Employer* for the *Employer's* acceptance. The *Employer* responds to the *Consultant's* amended Design Documents above as soon as practicable. The *Consultant's* shall not proceed with the relevant work in accordance with the amended *Consultant's* Design Documents until such amendments are accepted by the *Employer*, which acceptance shall not be unreasonable delayed or withheld.
- Z6.6 Where a *Consultant's* Design Document is returned marked 'C', the *Consultant*:
- Z6.6.1 amends the *Consultant's* Design Document to incorporate the *Employer's* comments,
- Z6.6.2 re-submits it to the *Employer* for acceptance; and
- Z6.6.3 does not proceed with the relevant work until the *Employer* has returned it marked 'A' or 'B' and, where it is marked 'B', has complied with clause Z6.5.
- Z6.7 If the *Consultant* disagrees with a comment of the *Employer* on a *Consultant's* Design Document marked 'B' or 'C', he notifies the *Employer* within one week of receipt stating his reasons and that in his opinion compliance with the comment will give rise to a change in the Scope. The *Employer* replies within one week of receipt of the *Consultant's* notice either confirming or withdrawing his comment. A confirmation or withdrawal by the *Employer* is not an acceptance of the *Consultant's* opinion
- Z6.8 If the *Consultant* does not notify the *Employer* within one week that he disagrees with a comment of the *Employer*, compliance with the comment does not give rise to a change in the Scope.
- Z7 Extending the defects date: add the following as a new core clause 42:**
- Z7.1 If the *Employer* cannot use the work due to a Defect, which arises after Completion and before the *defects date*, the *defects date* is delayed by a period equal to that during which the *Employer*, due to a Defect, is unable to use the work.
- Z7.2 The *Employer* notifies the *Consultant* of the change to a *defect date* when the delay occurs. The period between Completion and an extended *defects date* does not exceed twice the period between Completion and the *defects date* stated in the Contract Data.
- Z8 Assessing the amount due:**
- Delete the first sentence of core clause 50.2 and replace with the following:**
Invoices submitted by the *Consultant* to the *Employer* include
- the details stated in the Scope to show how the amount due has been assessed, and
 - the details required by the *Employer* for a valid tax invoice.

Z9 Payment**Z9.1 Delete the first sentence of core clause 51.1 and replace with the following:**

Each payment is made by the Employer within three weeks of receiving the Consultant's invoice showing the details which this contract requires or, if a different period is stated in the Contract Data, within the period stated.

Z9.2 Add the following as a new core clause 51.6:

If the *Consultant* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.4 is then calculated from the delayed date by when payment is to be made.

Z10 Compensation events: core clause 60.1(1) is amended to read as follows:

(1) The *Employer* gives an instruction to change the Scope, except

- a change to the Scope provided by the *Consultant* which is made either at his request or to comply with another part of the Services;
- a change to the Scope arising from a decision at a risk reduction meeting where such a change is required as a result of the *Consultant's* fault or as a consequence of a risk carried by the *Consultant*.

Z11 Notification of a compensation event: the last sentence of core clause 61.3 is amended to read as follows:

If the Consultant does not notify a compensation event within four weeks of the date on which the Consultant became aware of the event or ought to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date and the Employer is absolved from all liability in connection with the event.

Z12 Assessing compensation events: add the following at the end of core clause 63.4:

The Consultant shall only be entitled to changes to the Prices, the Completion Date and/or the Key Date if the compensation event affects a critical path.

Z13 Time periods for compensation events: add the following as a new clause 66.1:

The time periods stipulated in this clause 6 may be amended by agreement between the Parties and the Project Manager if the Employer's internal procedures dictate that the time periods be so extended and such agreement shall not be unreasonably withheld by the Consultant.

AMENDMENTS TO THE SECONDARY OPTION CLAUSES**Z19 Changes in the Law: Add the following as a new secondary option clause X2.2 (if option X2 is applicable to this Contract):**

A change in law is defined as:

- the adoption, enactment, promulgation, coming into effect, repeal, amendment, reinterpretation, change in application or other modification after the Contract Date of any law, excluding (i) the enactment of any bill inside the country, but only if such bill is enacted without any material changes being made to the contents of such bill from the form published in the Gazette (as defined in the Interpretation Act, 1957) as at the Contract Date, and (ii) any such modification in law relating to any taxes, charges, imposts, duties, levies or deductions that are assessed in relation to a person's income; or
- any permit being terminated, withdrawn, amended, modified or replaced, other than (i) in accordance with the terms upon which it was originally granted, (ii) as a result of the failure by the Consultant to comply with any condition set out therein, or (iii) as a result of any act or omission of the *Consultant*, any Sub-Consultant or any affiliate to the *Consultant*.

Z20 Delay Damages: add the following to as a new secondary option clause X7.3 (if option X7 is applicable in this contract)

If the amount due for the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Employer* may, at its sole discretion, terminate the *Consultant's* obligation to Provide the Services.

Z21 Performance Bond

Z21.1 Amend the first sentence of secondary option clause X13.1 to read as follows: The *Consultant* gives the *Employer* an unconditional, on-demand performance bond, provided by a bank or insurer which the *Employer* has accepted, for the amount stated in the Contract Data and in the form set out in Annexure B of this Contract Data.

Z21.2 Add the following as new secondary option clause X13.2: The *Consultant* ensures that the performance bond is valid and enforceable until the end of the *contract period*. If the terms of the performance bond specify its expiry date and the end of the *contract period* does not coincide with such expiry date, four weeks prior to the said expiry date, the *Consultant* extends the validity of the performance bond until the end of the *contract period*. If the *Consultant* fails to so extend the validity of the performance bond, the *Employer* may claim the full amount of the performance bond and retain the proceeds as cash security.

Z22 Limitation of liability: Insert the following new clause as Option X18.4:

Z22.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00.

Z22.2 Notwithstanding any other clause in this contract, any proceeds received from the security bonds and guarantees provided by the *Consultant* in terms of this Contract and any insurances or any proceeds which would have been received from any insurances but for the conduct of the *Consultant* shall be excluded from the calculation of the limitations of liability listed in the contract.

ADDITIONAL Z CLAUSES**Z23 Cession, delegation and assignment**

Z23.1 The *Consultant* shall not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*, which consent shall not be unreasonably withheld. This clause shall be binding on the liquidator/business rescue practitioner /trustee (whether provisional or not) of the *Consultant*.

Z23.2 The *Employer* may, on written notice to the *Consultant*, cede and delegate its rights and obligations under this contract to any person or entity.

Z24 Joint and several liability

Z24.1 If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons, these persons are deemed to be jointly and severally liable to the *Employer* for the performance of the Contract.

Z24.2 The *Consultant* shall, within 1 week of the Contract Date, notify the *Employer* of the key person who has the authority to bind the *Consultant* on their behalf.

Z24.3 The *Consultant* does not materially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without prior written consent of the *Employer*.

Z25 Ethics

Z25.1 The *Consultant* undertakes:

Z25.1.1 not to give any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract;

- Z25.1.2 to comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the *Employer* is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
- Z25.2 The *Consultant's* breach of this clause constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.
- Z25.3 If the *Consultant* is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the *Employer*, the *Employer* shall be entitled to terminate the contract in accordance with the procedures stated in core clause 92.2. the amount due on termination is A1.

Z26 Confidentiality

- Z26.1 All information obtained in terms of this contract or arising from the implementation of this contract shall be treated as confidential by the *Consultant* and shall not be used or divulged or published to any person not being a party to this contract, without the prior written consent of the *Project Manager* or the *Employer*, which consent shall not be unreasonably withheld.
- Z26.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until otherwise notified by the *Project Manager*.
- Z26.3 This undertaking shall not apply to –
- Z26.3.1 Information disclosed to the employees of the *Consultant* for the purposes of the implementation of this agreement. The *Consultant* undertakes to procure that its employees are aware of the confidential nature of the information so disclosed and that they comply with the provisions of this clause;
- Z26.3.2 Information which the *Consultant* is required by law to disclose, provided that the *Consultant* notifies the *Employer* prior to disclosure so as to enable the *Employer* to take the appropriate action to protect such information. The *Consultant* may disclose such information only to the extent required by law and shall use reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed;
- Z26.3.3 Information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time);
- Z26.3.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z26.4 The *Consultant* ensures that all his Sub Consultants abide by the undertakings in this clause.

Z27 Employer's Step-in rights

- Z27.1 If the *Consultant* defaults by failing to comply with his obligations and fails to remedy such default within the period stated in the notification of the default by the *Project Manager*, the *Employer*, without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any sub Consultant or supplier of the *Consultant*) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the *Consultant*.
- Z27.2 The *Consultant* co-operates with the *Employer* and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the

Consultant under the contract or otherwise for and/or in connection with the *works*) and generally does all things required by the *Project Manager* to achieve this end.

Z28 Liens and Encumbrances

The *Consultant* keeps the Equipment used to Provide the Services free of all liens and other encumbrances at all times. The *Consultant*, vis-a-vis the *Employer*, waives all and any liens which he may from time to time have, or become entitled to over such Equipment and any part thereof and procures that his Sub-Consultants similarly, vis-a-vis the *Employer*, waive all liens they may have or become entitled to over such Equipment from time to time.

Z29 Intellectual Property

Z29.1 Intellectual Property ("IP") rights means all rights in and to any patent, design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works.

Z29.2 IP rights remain vested in the originator and shall not be used for any reason whatsoever other than carrying out the *works*.

Z29.3 The *Consultant* gives the *Employer* an irrevocable, transferrable, non-exclusive, royalty free licence to use and copy all IP related to the *works* for the purposes of constructing, repairing, demolishing, operating and maintaining the works.

Z29.4 The written approval of the *Consultant* is to be obtained before the *Consultant's* IP made available to any third party which approval will not be unreasonably withheld or delayed. Prior to making any *Consultant's* IP available to any third party the *Employer* shall obtain a written confidentiality undertaking from any such third party on terms no less onerous than the terms the *Employer* would use to protect its IP.

Z29.5 The *Consultant* shall indemnify and hold the *Employer* harmless against and from any claim alleging an infringement of IP rights ("**the claim**"), which arises out of or in relation to:

Z29.5.1 the *Consultant's* design, manufacture, construction or execution of the Works;

Z29.5.2 the use of the *Consultant's* Equipment, or

Z29.5.3 the proper use of the Works.

Z29.6 The *Employer* shall, at the request and cost of the *Consultant*, assist in contesting the claim and the *Consultant* may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it.

AMENDMENTS TO THE W OPTION CLAUSES

Z30 **Dispute resolution: The following amendments are made to Option W1:**

Z30.1 **Under clause W1.3, in the fourth row of the first column of the adjudication table, the following words are added after the words "any other matter": "excluding disputes relating to termination of the contract".**

Z30.2 **The following clauses are added at the end of clause W1.3:**

Z30.2.1 "The Adjudicator shall decide the dispute solely on the written submissions of the parties. No oral submissions shall be heard during adjudication."

Annexure C1 - Panel of Adjudicators

One of the following adjudicators shall be selected by the referring party as and when a dispute arises.

Name	Location	Contact details (phone & e mail)
Adv. Ghandi Badela	Gauteng	+27 11 282 3700 ghandi@badela.co.za
Mr. Errol Tate Pr. Eng.	Durban	+27 11 262 4001 Errol.tate@mweb.co.za
Adv. Saleem Ebrahim	Gauteng	+27 11 535 1800 salimebrahim@mweb.co.za
Mr. Sebe Msutwana Pr. Eng.	Gauteng	+27 11 442 8555 sebe@civilprojects.co.za
Mr. Sam Amod	Gauteng	sam@samamod.com
Adv. Sias Ryneke SC	Gauteng	083 653 2281 reyneke@duma.nokwe.co.za
Mr. Emeka Ogbugo (Quantity Surveyor)	Pretoria	+27 12 349 2027 emeka@gosiame.co.za

C1.2 Contract Data – Part 2

Part two - Data provided by the *Consultant*

The Conditions of Contract are selected from the NEC3 Professional Services Contract, April 2013.

Each item of data given below is cross-referenced to the clause in the NEC3 Professional Services Contract which requires it.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	<p>The <i>Consultant</i> is (Name):</p> <p>Address:</p> <p>Tel No:</p> <p>Fax No:</p> <p>Email Address:</p>	
22.1	<p>The <i>Consultant's</i> key persons are:</p> <p>1. Name:</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p> <p>2. Name:</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p> <p>3. Name:</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p> <p>4. Name:</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p>	

Experience:

11.2(3)	The <i>completion date</i> for the whole of the services is	Date on which the certificate of final completion is issued and Close Out Report is accepted by ACSA.	
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Availability of As-Built drawings / information • Access to Site (approvals and permits, police clearance required) • Statutory and ACSA Approvals • Site Constraints and constructability • Deviations from Programme & cash flow • Notification of claims • Financial & Procurement • Phased completion of services 	
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	<i>access date</i>
		1 Project Information	Upon acceptance of the Programme
		2 Site Access	Upon approval of the airport access permits