

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 11107/14

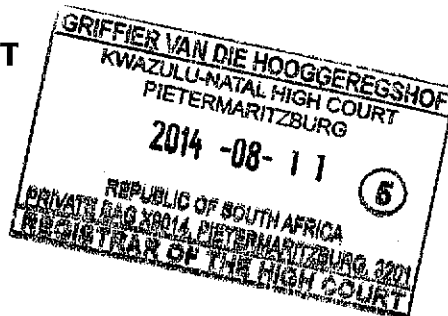
In the matter between:

SPECIAL INVESTIGATING UNIT

and

MINENHLE MAKHANYA

NATIONAL DEPARTMENT OF PUBLIC WORKS



PLAINTIFF

1st DEFENDANT

2nd DEFENDANT

COMBINED SUMMONS

TO: THE SHERIFF OF THE HIGH COURT OR HIS DEPUTY

INFORM: **Minenhle Makhanya**, an adult male Architect trading or practicing as such under the name and style of Minenhle Makhanya Architects and whose principal place of business is situated at 11 Florence Road, Pinetown, KwaZulu-Natal

(hereinafter referred to as the "**1st Defendant**")

and

The National Department of Public Works , which is a National Department referred to in column 1 of schedule 1 of the Public Service Act, Proclamation No. 103 of 1994, care of the Office of the State

Attorney, 6th Floor, Metlife Building, 391 Anton Lembede Street,
Durban



(hereinafter referred to as the "**2nd Defendant**")

THAT the **SPECIAL INVESTIGATING UNIT** an organ of state referred to in section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act, 74 of 1996 which has been established in terms of Proclamation No. R118 of 2001 published in Government Gazette No. 22531 of 31 July 2001 and whose regional office is situated at Unit 3 & 4, Bishops Court, Cnr of Warrior and Delamore Roads, Hillcrest, KwaZulu-Natal

(hereinafter referred to as the "**Plaintiff**")

Hereby institutes action against the Defendants in which action the Plaintiff claims the relief on the grounds set out in the Particulars of Claim annexed hereto.

INFORM the Defendants further that if the Defendants dispute the claim and wish to defend the action, the Defendants shall:

- (i) Within ~~ten~~²⁰ **(10)** days of the service upon the Defendants of this summons,  file with the Registrar of this court at 301 Church Street, Pietermaritzburg, KwaZulu-Natal, their Notice of Intention to Defend, and serve a copy thereof on the Plaintiff's Attorneys, which notice shall give an address (not being a post box or *poste restante*) referred to in Rule 19(3) for the service upon the Defendants of all notices and documents in this action such an address being within **fifteen (15) kilometres** of the office of the Registrar or, if the Defendants or their Attorneys are a person who is in terms of any law 

prohibited from being the occupier of land of premises within the distance of **fifteen (15) kilometres** from such office, an address further than **fifteen (15) kilometres** from such office but within the magisterial district in which such office is situated;

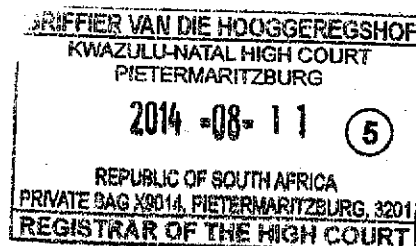
- (ii) thereafter, and within **twenty (20)** days after filing and serving the notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff's attorneys a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendants further that if they fail to file and serve the notice as aforementioned, Judgement as claimed may be given against the Defendants without further notice to the Defendants, or if, having filed and served such notice, fail to plead, except, make application to strike out or counter claim, judgement may be given against them.

AND immediately thereafter serve on the Defendants a copy of this Summons (with the attached particulars of claim) and return same to the Registrar with whatsoever you have done thereupon.

DATED AT PIETERMARITZBURG ON THIS 11th DAY OF AUGUST 2014

V MOHAN
Acting Ass. Registrar



Registrar of the High Court
High Court Building
301 Church Street
Pietermaritzburg



Ashish Gosai

Plaintiffs' Attorney

(duly appointed Senior Forensic Lawyer at the SIU)

(Acting on behalf of the SIU i.t.o section 5(9) of Act 74 of 1996)

Special Investigating Unit

Unit 3 & 4, Bishops Court

Cnr Warrior and Delamore Roads

Hillcrest

KwaZulu-Natal

Tel 031 761 6610

c/o Udesb Ramessar Attorneys

Office 6 Joomason's Arcade

476 Church Street

Pietermaritzburg

3201

Tel 033 345 9569

Ref: URamessar/siu

PARTICULARS OF CLAIM

A. *The Parties*

1. The plaintiff:

1.1 is the Special Investigating Unit, an organ of State referred to in section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act, 74 of 1996 ("the SIU Act");

1.2 has been established in terms of Proclamation No. R.118 of 2001 published in Government Gazette No. 22531 of 31 July 2001 issued by the President of the Republic of South Africa to perform functions and duties referred to in that Proclamation and the SIU Act;

1.3 has its regional place of business within the area of jurisdiction of this Honourable Court at Unit 3 and 4, Bishops Court, Cnr Warrior and Delamore Roads, Hillcrest, KwaZulu-Natal Province.

1.4 Is, in terms of Proclamation R.59 of 2013, published in Government Gazette No. 27192 dated 20 December 2013, directed to investigate certain specified matters relating to, broadly speaking, the procurement of goods, works and services by the second defendant in a manner that was not fair, equitable, transparent, competitive and cost-effective, and also recover such financial loss as the State may have suffered as a result of wrongful and unlawful conduct connected to such procurement. The investigation covered the period 1 January 2008 to 20 December 2013.

2. The first defendant:

- 2.1 is Minenhle Makhanya, an architect trading or practising as such under the name and style of Minenhle Makhanya Architects;
- 2.2 has his principal place of business within the area of jurisdiction of this Honourable Court at 11 Florence Road, Pinetown, KwaZulu-Natal Province;
- 2.3 is registered as an architect in terms of the relevant provisions of the Architectural Profession Act, 44 of 2000.

3. The second defendant is the National Department of Public Works:
- 3.1 which is a national department referred to in column 1 of Schedule 1 of the Public Service Act, Proclamation No. 103 of 1994;
- 3.2 which is also a national department referred to in section 1 of the Public Finance Management Act, 1 of 1999, as amended ("the PFMA"); which has its regional place of business at 2nd floor, Old Government Building, Dr Pixie Kaseme Street and Samora Machel Drive, Durban, 4001 care of the Office of the State Attorney, 6th Floor, Metlife Building, 391 Anton Lembede Street, Durban.

B. Jurisdiction

4. This Honourable Court has jurisdiction to hear and determine the plaintiff's claim by virtue of the fact that all of the parties in this action have their branch offices or principal places of business within the area of jurisdiction of this Honourable Court.
5. The plaintiff also asserts the jurisdiction of this Court to hear and determine its claim by reason of the fact that the causes of action as are set out more fully below arose wholly within the jurisdiction of this Honourable Court.
6. In any event, it is desirable and convenient that this Honourable Court should exercise its jurisdiction to hear and determine the plaintiffs claim, in order to avoid multiplicity of claims, and having regard to the location of witnesses and possible inspections *in loco* which might arise at or prior to the commencement of the trial.

C. Background facts

7. On or about 9 May 2009 Mr Jacob Gedleyihlekisa Zuma was inaugurated as the President of the Republic, following upon the outcome of the election

of members of the National Assembly held on or about 22 April 2009 and his election by the National Assembly.

8. By virtue of his inauguration and assumption of office as the President, Mr Zuma became entitled to the provision of security and protection of his person and members of his family and private residence at which he normally resides at the expense of the State, but only in accordance with the requirements and procedures prescribed in terms of the Cabinet Memorandum adopted by the National Executive of the Republic on or about 20 August 2003 (hereinafter referred to as "the Cabinet Memorandum").
9. In terms of the Cabinet Memorandum:
 - 9.1 the South African Police Service ("SAPS") which is one of the security services referred to in section 205 of the Constitution of the Republic of South Africa Act, 108 of 1996, as amended ("the Constitution") and established in terms of section 5 of the South African Police Service Act, 68 of 1995, as amended ("the SAPS Act") is responsible for undertaking the necessary analysis, at the request of the President, and making a determination of the nature and extent of security installations, improvements or

services that must be provided to the President and his family at his private residence, at the expense of the State;

9.2 to the extent necessary, the South African National Defence Force ("SANDF"), another security service of the Republic referred to in section 200 of the Constitution and established pursuant to the relevant provisions of section 11 of the Defence Act, 42 of 2002, as amended ("the Defence Act") is responsible for analysing and determining additional security measures in respect of the health care requirements, installations or services which the President and members of his immediate family may require at the President's private residence, at the expense of the Government. The SAPS security measures and the SANDF health measures are collectively referred to as "security measures" for convenience.

9.3 both SAPS and SANDF are required to submit their reports on the security assessments performed by them to the National Department of Public Works ("DPW"), which in turn is required to:

9.3.1 determine the precise or estimated costs of the security installation, upgrades and services at the President's private residence, in accordance with the

assessments and determination made by SAPS and SANDF;

9.3.2 procure the budget which is required to fund payment of the security installation, upgrades and services at the private residence of the President, in accordance with the assessments and determination made by SAPS and SANDF.

9.4 DPW is then required to procure goods and services for the installation of the necessary security measures as have been determined by SAPS and SANDF, and ensure that such goods and services are procured in terms of a system of procurement contemplated in section 217 of the Constitution, read with section 38(1)(a)(iii) of the PFMA as well as the Supply Chain Management Policy and Procedures of DPW.

10. Before the security measures that have been determined by SAPS and SANDF may be installed or implemented at the private residence of the President, the following process and procedure must be complied with, in terms of the Cabinet Memorandum:

- 10.1 At the request of the President, SAPS will undertake a site inspection at the private residence of the President and evaluate the security measures that are required to ensure safety and security of the President and his family members. The evaluation of SAPS will also take into account any findings of the security threat analysis which may have been performed by the then National Intelligence Agency, now called State Security Agency.
- 10.2 After performing its evaluation and analysis, SAPS will then compile a report on its findings and set out the nature and extent of the security measures that are required to ensure the security and safety of the President and his family.
- 10.3 To the extent necessary, SANDF will also undertake a site inspection in order to evaluate additional security measures which the President requires at his private residence. It too will compile a report on the nature and extent of the security measures that are required for the safety and protection of the President and his family at his private residence.
- 10.4 SAPS and SANDF will then submit their reports to DPW which will determine the costs of the security measures required by SAPS and SANDF.

- 10.5 After it has determined the precise or estimated costs of the proposed security measures that are required in terms of the reports of SAPS and SANDF, DPW would then notify SAPS and SANDF of the costs of the relevant security measures.
- 10.6 SAPS will then present the proposed security measures determined by it and SANDF and the costs thereof as have been determined by DPW to the Minister of Safety and Security for his consideration and approval.
- 10.7 In the event the Minister of Safety and Security approves both the proposed security measures and the costs thereof, he or she will then inform the President about those measures and costs thereof for his consideration and consent.
- 10.8 In the event the President consents to the proposed security measures and costs thereof, then SAPS would then submit the proposed security measures and costs thereof to DPW so that it would become the implementing agent for the installation of the relevant security measures after DPW having obtained approval for the costs of the security measures from the Minister of Public Works.

- 10.9 The implementation by DPW and the costs thereof will be in line with the requirements and determinations contained in the reports prepared by SAPS and SANDF.
11. On or about 28 May 2009 and 25 June 2010 SAPS undertook site visits of the President's private residence at Nkandla, evaluated and determined security measures which were required to protect the safety of the President and his family.
12. During May 2009, the SANDF, through its medical unit known as South African Military Health Service ("SAMHS") also undertook the site visit of Nkandla and evaluated the nature and extent of the additional security measures that are required from it in order to protect and promote the safety and security of the President and his family.
13. Both SAPS and SANDF submitted reports of their evaluation of security measures which were required to ensure the safety and security of the President in Nkandla. Copies of the relevant reports ("the reports") are not annexed hereto as they are classified.
14. Subsequently, DPW established the costs of the installation of the security measures that were required in accordance with the reports submitted by

SAPS and SANDF. The costs as were determined by DPW amounted to R27 893 067.46.

15. On or about 6 August 2009, Ms N Mbukushe, who was then a Director of DPW submitted the costs estimate in order of R27 893 067.46 to the Planned Maintenance Budget Committee of DPW ("the PMBC") in order to ensure that the funds that are required for the payment of the relevant security measures were budgeted for and became available as and when they were required.
16. On or about 11 August 2009 the PMBC authorized and secured the budget for the funds that were required for implementation of the security measures in the order of R27 893 067.46. In consequence, the funds which DPW was required to lawfully expend on the implementation of the security measures at Nkandla were limited to the sum of R27 893 067.46.
17. By virtue of the foregoing, DPW became the implementing agent of the security measures that were determined by SAPS and SANDF in terms of the reports.
18. In fulfilling its functions and duties as the implementing agent, DPW was required to and obliged to procure goods and services strictly in accordance with the system of procurement contemplated in section 217

of the Constitution and prescribed by section 38(1)(a)(iii) of the PFMA and its Supply Chain Management Policy and Procedures.

D. Claim A

19. On or about 10 August 2009 DPW, represented by D J Rindel who was designated as the project manager for the implementation of the security installations at Nkandla offered to appoint the first defendant as the principal agent to, *inter alia*, design the construction works, procure the relevant contractors and security service providers, oversee progress and certify payment to the service providers who provided goods, services or labour in connection with the works at Nkandla.
20. The appointment was made by Rindel, representing the Director-General of DPW in terms of the letter of appointment dated 10 August 2009 annexed hereto and marked "A" and was accepted by the first defendant in writing on 27 August 2009 in terms of the letter annexed hereto and marked "B". The parties concluded a written contract which sets out the mandate of the first defendant and is incorporated in annexure "A".
21. The appointment of the first defendant as aforesaid, was unlawful, invalid and in breach of the system of procurement for goods and services by DPW in terms of the relevant provisions of section 217 of the Constitution

and section 38(1)(a)(iii) of the PFMA as well as its Supply Chain Management Policy and Procedures, in that:

- 21.1 it was not preceded by a competitive bidding or open tender process, in which all interested parties with relevant qualifications and expertise were invited to tender;
- 21.2 it was based on a departure from the prescribed competitive bidding or open tender process which was not justifiable in terms of the relevant Treasury Instructions described in Regulation 16A.4 of the Treasury Regulations promulgated on 15 March 2005 pursuant to section 75(4)(c) of the PFMA;
- 21.3 it was made on the strength of a request by Rindel and/or the then Director-General of DPW to appoint the first defendant when both of them knew or ought to have known that the first defendant was not on the list of registered suppliers of DPW ("DPW Roster System");
- 21.4 it was based purely on the motivation by Rindel and/or the then Director-General of DPW that the first defendant had already been appointed as the architect for the construction of improvements at Nkandla. To the knowledge of both Rindel and the then

Director-General of DPW, the said motivation was not, on its own, justifiable reason to depart from a competitive bidding or open tender process.

22. When he was appointed as the principal agent as aforesaid, the first defendant knew or ought to have known that:
 - 22.1 he did not submit any competitive bid of his own and was therefore not appointed pursuant to a system of procurement contemplated in section 217 of the Constitution, section 38(1)(a)(iii) of the PFMA and the Supply Chain Management Policy and Procedure of DPW;
 - 22.2 he was not registered on the DPW Roster System which regulates the appointments of consultants such as the first defendant.
23. In the premises, the first defendant knew or ought to have known, by exercise of reasonable care and skill, that his appointment as the principal agent was not in accordance with a lawful procurement system, and was therefore invalid.

24. Having regard to the foregoing, the appointment of the first defendant as the principal agent, as well as the conclusion of the contract set out in annexure "A" hereto, are unlawful, invalid and of no force and effect and the plaintiff prays for a declaration of invalidity in terms of section 172(1)(a) of the Constitution.

E. Claim B

25. After his appointment in circumstances set out above, the first defendant proceeded to authorize and oversee the implementation of improvements and installation of security measures at Nkandla, in excess of and beyond the security assessments and requirements determined by SAPS and SANDF, and at a cost far more than that which was approved and budgeted for by DPW.
26. By December 2013 the cost of the security upgrades and installation of the security measures at Nkandla had increased to more than R216 million as a result of the authorizations and approvals given by the first defendant, acting as the principal agent. The breakdown of the payments made to the consultants and contractors are set out in table 1 below:

Table 1 : Appointment of Consultants and Contractors					
No	Company name	Appointment date	Services / Construction of	Appointment process followed	Total amount paid (per BAS)
1	R&G Consultants	Sept 2009	Quantity Surveyors	Nominated	R13 794 957.70
2	Igoda Projects	Sept 2009	Electrical Engineers	Nominated	R2 517 482.72

3	Ibhongo	Sept 2009	Structural and Civil Engineers	Nominated	R6 006 457.36
4	Makhanya	Sept 2009	Architect and Principal Agent	Nominated	R17 018 567.34
5	CA Du Toit	July 2010	Security Consultant	Roster System	R2 691 231.49
6	Mustapha & Cachalia	June 2010	Mechanical Engineering Services	Roster system	R3 676 448.05
7	Ramcon	Oct 2010	Project Managers	Open Tender	R5 092 477.73
8	Moneymine	June 2010	security works	Negotiated	R8 955 313.58
		Jan 2011	Construction of 6 new buildings	Negotiated	R44 827 168.09
		Aug 2012	Completion of contract 004 – Bonelena	Negotiated	R3 792 808.20
9	SABRG	Sept 2010	Installation of bullet resistant glass	Emergency Delegation	R3 035 293.80
10	Betafence	Sept 2010	Supply of high security fencing	Emergency Delegation	R9 237 471.51
11	Natal Park Homes	Oct 2010	Supply of Park Homes	Emergency Delegation	R2 436 396.60
12	Pro-Hydraulic	Nov 2010	Supply of a mobile generator	Emergency Delegation	R275 250.00
13	Bonelena	June 2010	Emergency Works : Security Measures	Nominated	R24 880 897.68
		Jan 2011	Construction of 25 new buildings	Negotiated	R54 850 502.99
14	Otis	June 2011	Supply of lifts	Open Tender	R2 069 607.72
15	E Magubane	June 2011	Supply of electronic security systems	Negotiated	R10 852 145.68
Total amount paid by DPW for the security upgrade					R216 010 478.24

27. In exercising his powers, functions and duties, the first defendant varied the scope of works at Nkandla and authorized the construction and erection of the following structures at Nkandla which were not security measures as were determined by SAPS and SANDF in the reports:

27.1 tunnels with an exit and three (3) lifts at the cost of R21 180 245.00;

- 27.2 construction of **additional 20 units for accommodation of members of SAPS and SANDF and laundry facility** at Nkandla at the cost of R11 963 924.00;
- 27.3 **visitors lounge** at the cost of R3 927 954.00;
- 27.4 **basement parking** for the clinic at the cost of R4 971 995.00;
- 27.5 **VIP parking and fire pool** at the cost of R3 964 239.00;
- 27.6 **relocation of 4.5 households** at the cost of R10 622 616.00
- 27.7 construction of **road 1 and road 3** inside the premises of Nkandla at the cost of R4 454 454.00;
- 27.8 installation of **air conditioning** at the cost of R4 049 129.00;
- 27.9 **landscaping** in the high security area at Nkandla in the sum of R3 371 550.00.

28. The total amount for the construction and installation of the above works is R68 506 106.00
29. In terms of the relevant provisions of section 27 of the Architectural Professions Act, 44 of 2000 read with Rule 4 of the Code of Conduct published in the Board Notice No. 154 of 27 November 2009 and the Board Notice No. 161 of 1 January 2001 and Board Notice No. 3 of 16 January 2009 made in terms of the Architectural Professions Act, as well as DPW's Architect's Manual of September 2002 the first defendant was obliged to, *inter alia*, design plans for variation of the scope of works, request approval of such variations from DPW and obtain written consent from DPW before he could authorize the implementation of the variation of the works, and authorize payment arising from that variation.
30. Furthermore, in terms of the relevant provisions of section X1 of the annexure "A" hereto, the first defendant was required to submit variation to the scope of works set out in the reports to DPW for its consideration and approval before he could lawfully authorize the implementation of such variation and certify payments based on that variation.
31. In breach of aforesaid provisions of the Architectural Professions Act, Board Notices 154 and 161 and section X1 of annexure "A" hereto, the first defendant implemented the above variation of the scope of works referred

to in paragraphs 27.1 to 27.9 above without any written request for approval of such variation by DPW and without any written consent or approval of such variation from DPW.

32. Alternatively to paragraphs 28 to 30 above, the first defendant owed a duty of care to DPW to ensure that he executed his functions and duties as the principal agent in a manner which does not result in financial loss to it, and also procure goods and services from service providers involved in Nkandla at prices which were market related.

33. The duty of care which the first defendant owed to DPW arose from the following facts and circumstances:

33.1 The first defendant was aware or ought to have been aware, by exercise of reasonable care and skill expected of him as a registered architect and principal agent, that the scope of works for the security upgrades and installations at Nkandla were as determined by SAPS and SANDF in the reports;

33.2 The first defendant was aware or ought to have been aware, by exercise of reasonable care and skill expected of him as a registered architect, that the costs of the security upgrades and

installations in Nkandla as was approved and budgeted for by DPW was R27 893 067.46.

- 33.3 In any event, the first defendant was required, in terms of the relevant provisions of the Architectural Professions Act and the Board Notice No. 154 of 27 November 2009 and the Board Notice No. 161 of 1 January 2001 and Board Notice No. 3 of 16 January 2009, to ascertain the precise scope of works and the amounts which was authorized by DPW and his client for the security upgrades and installations in Nkandla.
34. In breach of the duty of care he owed to DPW the first defendant wrongfully and unlawfully varied the scope of works set out in the reports and authorized the construction of the works described in paragraphs 27.1 to 27.9 above which resulted in additional costs set out therein and which were neither authorized nor budgeted for by DPW. He also certified payments of invoices submitted by service providers at inflated prices which were higher than market related prices.
35. When he breached the duty of care as aforesaid, the first defendant acted unlawfully and negligently in that:

- 35.1 He did not obtain prior written consent of DPW to authorize the said variations;
- 35.2 He did not submit in writing the requisite final plans and specifications of the said variation for consideration and approval by DPW;
- 35.3 He also did not submit the requisite actual or reasonable estimated costs of the said variation to DPW for its consideration and approval;
- 35.4 He should have foreseen that the implementation of the said variation in the above circumstances will cause DPW to suffer financial loss.
36. As a result of the first defendant's aforesaid wrongful, unlawful and negligent conduct DPW suffered financial loss in the sum of R68 506 106.00 which the first defendant is obliged to pay.
37. As a result of the first defendant's breach, DPW paid the sum of R68 506 106.00 to service providers which it was not obliged to pay. As a

result thereof the State and the DPW suffered loss in the sum of R68 506 106.00.

38. Having regard to the circumstances set out above, it is just and equitable that the first defendant should be ordered to pay the sum of R68 506 106.00.

F. Claim C

39. The claim arises from:

39.1 first, the wrongful and unlawful conduct of the first defendant when he over-designed the scope of works that was determined by SAPS and SANDF in the reports, without prior written authorization by DPW, and which resulted in unauthorized increases in the costs of construction of the works at Nkandla;

39.2 secondly, excessive payments that were far above the market related costs to certain service providers which the first defendant authorized when, by exercise of reasonable care and skill, he should and ought not to have done so.

40. The overdesign that were unlawfully authorized by the first defendant are the following:

40.1 In terms of SAPS requirements and specifications the sizes of the **three guard houses** had to be 20.4 square metres in size. The first defendant authorized the construction of guard houses which were bigger in size in the following manner:

40.1.1 guard house no 1 was 33.13 square metres;

40.1.2 guard houses no 2 and no 3 were each 23.62 square metres;

40.1.3 As a result of the over-design of the guard houses DPW incurred and paid additional costs which were authorized and certified by the first defendant.

40.1.4 The said additional costs which were incurred and paid by DPW is R498 520.72, which is calculated as follows

40.1.4.1 additional square-metres of guard house 1 equals 12.73 square-metres at a cost of

R13 149.00 per square-metre being
R167 386.77; plus

40.1.4.2 additional square-metres of guard houses 2
and 3 equals 6.44 square-metres at a cost of
R31 407.72 per square-metre being
R202 265.71; equates to

40.1.4.3 The total amount being R369 652.48; plus

40.1.4.4 Professional fees at R67 646.40; plus

40.1.4.5 R61 221.84 which represents VAT on the
above amounts.

40.2 The **control room** was designed to be 40 square metres in terms
SAPS specification. The first defendant designed and approved the
control room which was 114 square metres, which was excessive
by 74 square metres.

40.2.1 As a result of the first defendant's over-design DPW paid the additional sum of R2 505 764.08 which is calculated as follows:

40.2.1.1 74 square metres multiplied by R25 108.39 per square metre, which is R1 858 020.86; plus

40.2.1.2 Additional professional fees of R340 017.81; plus

40.2.1.3 R307 725.41 which represents VAT on the above amounts.

40.3 The first defendant approved and authorized the over design of the construction of the **onsite clinic** at 320 square metres and certified payment thereof at the sum of R8 133 257.49, which is calculated as follows:

40.3.1 320 square metres multiplied by R18 846.25 per square metre, being the actual cost of construction, amounting to R6 030 800.00; plus

40.3.2 professional fees of R1 103 636.40; plus

40.3.3 R998 821.09 which represents VAT on the above amounts.

40.3.4 The first defendant should have authorized the construction of the onsite clinic at 289 square metres and certified payment thereof at the sum of R7 345 348.17, which is calculated as follows:

40.3.4.1 289 square metres multiplied by R18 846.25 per square metre, being the actual cost of construction, amounting to R5 446 566.25; plus

40.3.4.2 professional fees of R996 721.62; plus

40.3.4.3 R902 060.30 which represents VAT on the above amounts.

40.3.5 As a result of the first defendant's breach of his obligations in terms of annexure "A" hereto or breach of his duty of care, DPW overpaid for the construction of the onsite clinic by the sum of R787 909.31

40.4 At paragraph 27.2 above it is alleged that the first defendant authorised the construction of 20 additional accommodation units. That addition resulted in the need to **overdesign the sewer works** that would have sufficed for the units that had been requested in reports. The additional cost incurred was 50% of what has been charged i.e. R3 249 788.46. The loss of R1 624 894.23 is calculated as follows:

40.4.1 construction costs at R1 204 856.99; plus

40.4.2 professional fees of R220 488.83; plus

40.4.3 R199 548.41 which represents VAT on the above amounts.

40.5 The first defendant authorized and certified the design of the **14 staff houses** at 43 square metres whilst the SAPS required each to be 30 square metres. As a result of such over design the second defendant suffered a loss of R2 353 854.37. This is the difference between R7 785 826.01 (actual construction cost as authorised and certified by the first defendant) and R5 431 971.63 (which is the cost that the first defendant ought to have authorised). This is calculated as follows:

40.5.1 construction costs at R5 773 180.00; plus

40.5.2 professional fees of R1 056 491.94; plus

40.5.3 R956 154.07 which represents VAT on the above amounts.

40.5.4 The first defendant should have authorized the construction of the 14 staff units at 30 square metres and certified payment thereof at the sum of R5 431 971.63, which is calculated as follows:

40.5.4.1 14 units multiplied by 30 square metres
multiplied by R9 590.00 per square metre
being R4 027 800.00; plus

40.5.4.2 professional fees of R737 087.40; plus

40.5.4.3 R667 084.23 which represents VAT on the above amounts.

40.5.5 As a result of the first defendant's breach of his obligations in terms of annexure "A" hereto or breach of his duty of care, DPW overpaid for the construction of the 14 staff units by the sum of R2 353 854.37

41. The excessive payments which were above market related payments which the first defendant authorized and certified are the following:

41.1 The area of the **crew pavilion** was 65.92 square metres. The first defendant authorised and certified the actual cost of construction at a cost of R14 045.89 per square metre. The market related cost at that time is R9 000 per square metre. As a result of the authorisation and certification the second defendant suffered a loss of R448 584.80. This is the difference between R1 248 694.07 (actual cost as authorised and certified by the first defendant) and R800 109.27 (which is the cost that the first defendant ought to have authorised and certified based on market related costs). This is calculated as follows;

41.1.1 The **first defendant** certified and authorized construction of the Crew Pavillion at the rate of

R14 045.89 per square metre, being the actual cost of construction, amounting to R1 248 694.07

41.1.2 At that time the market related cost for 65.92 square metres for the construction of the Crew Pavillion was R9 000.00 per square metre equating to R800 109.27.00.

41.1.3 As a result of the first defendant's authorization and certification DPW overpaid the sum of R448 584.80 as a result of the first defendant's breach of annexure "A" hereto or the duty of care it owed to DPW.

41.2 The area of **guard houses 2 and 3** was 47.24 square metres. The first defendant authorised and certified the actual cost of construction at a cost of R31 407.72 per square metre. The market related cost at that time is R21 000 per square metre. As a result of the authorisation and certification the second defendant suffered a loss of R663 063.43. This is the difference between R2 000 948.42 (actual construction cost as authorised and certified by the first defendant) and R1 337 884.98 (which is the cost that the first defendant ought to have authorised and certified based on market related costs). This is calculated as follows;

- 41.2.1 The first defendant authorized construction of the Guard houses 2 and 3 at the rate of R31 407.72 per square metre, being the actual cost of construction, amounting to R2 000 948.42.
- 41.2.2 The market related cost of construction of guard houses 2 and 3 was 47.24 square metres at R21 000.00 per square metre at the relevant time amounting to R992 040.00; plus
- 41.2.3 professional fees of R181 543.32; plus
- 41.2.4 R164 301.66 which represents VAT on the above amounts.
- 41.2.5 The first defendant certified payment of R2 000 948.42 when he ought to have certified R1 337 884.98
- 41.2.6 As a result DPW overpaid by the sum of R663 673.76, and has suffered financial loss in that amount, as a result of the first defendant's unlawful conduct.

41.3 The area of the **on site clinic** was 320 square metres. The first defendant authorised and certified the actual cost of construction at a cost of R18 846.25 per square metre. The market related cost at that time is R13 500.00 per square metre. As a result of the authorisation and certification the second defendant suffered a loss of R2 307 219.09. This is the difference between R8 133 257.49 (actual construction cost as authorised and certified by the first defendant) and R5 826 038.40 (which is the cost that the first defendant ought to have authorised and certified based on market related costs). This is calculated as follows;

41.3.1 The market related cost of construction of the clinic was 320 square metres at R13 500.00 per square metre at the relevant time amounting to R4 320 000; plus

41.3.2 professional fees of R790 560; plus

41.3.3 R715 478.40 which represents VAT on the above amounts.

41.3.4 The first defendant certified payment of R8 133 257.49 when he ought to have certified R5 826 038.40.

41.3.5 As a result DPW overpaid by the sum of R2 307 219.09, and has suffered financial loss in that amount, as a result of the first defendant's unlawful conduct.

41.4 The first defendant authorized the construction of **concrete pillars** to support the inner perimeter fence at a cost of R2 064 232.67 when the first defendant ought to have certified and authorised R1 548 798.91. This led to a loss to the second defendant of R515 433.75 inclusive of VAT and fees.

41.4.1 Had reasonable care been exercised by the first defendant, the second defendant would have paid R1 548 798.91.

41.4.2 As a result DPW overpaid by the sum of R515 433.75 and has suffered a financial loss in that amount, as a result of the first defendant's unlawful conduct.

G. Claim D

42. This claim arises from additional professional fees which DPW paid to the first defendant and other service providers who were involved in Nkandla

as a result of the unlawful increase in the scope of works beyond the requirements of SAPS and SANDF, as well as claims for professional services at the rates higher than the applicable prescribed tariffs, which payments were certified by the first defendant as the principal agent.

43. The **first defendant** was overpaid in the sum of R5 624 541.90 for professional services which he rendered as the principal agent. The overpayment resulted from the fees which he charged which constitutes a breach of his obligations in terms of annexure "A" hereto or breach of his duty of care, and is calculated as follows:

43.1 Payments as per BAS at December 2013 totaled R17 018 567.34;
less

43.2 Vat [of R17 018 567.34] calculated at R2 089 999.50, less

43.3 Disbursements as per invoices at December 2013 totaling 4
746 434.54 excluding VAT; less

43.4 Adjusted professional fee for repeated units and building works
not designed by the first defendant amounting to R5 248 324.61;
plus

43.5 VAT in the amount of R690 733.21.

44. **Ilangaletu Consulting CC trading as R&G Consultants ("R&G")** who were quantity surveyors were overpaid by the sum of R6 297 925.58 which overpayment was authorized and certified by the first defendant. The overpayment to R&G is calculated as follows.

44.1 Payments as per BAS at December 2013 totaled R13 794 957.70;
less

44.2 Vat [of R13 794 957.70] calculated at R1 694 117.61, less

44.3 Disbursements as per invoices at December 2013 totaling
R667 603.95 excl VAT; less

44.4 Adjusted professional fee for electrical and mechanical trades;
and excessive variations not entitled to of R5 908 740.00; plus

44.5 VAT in the amount of R773 429.44.

45. **Ibongo Consulting CC** who provided civil and structural engineering services were overpaid by the sum of R255 681.51 for the services they

rendered. The overpayment was approved and authorized by the first defendant. The calculation of that overpayment is as follows.

45.1 Payments as per BAS at December 2013 totaled R6 006 457.36;
less

45.2 Vat [of R6 006 457.36] calculated at R737 635.11; less

45.3 Disbursements as per invoices at December 2013 totaling
R1 219 273.22; less

45.4 Adjusted professional fee based on fee base provided by R&G of
R3 825 267.00; plus

45.5 VAT in the amount of R31 399.48

46. **Mustapha & Cachalia Engineering CC** who provided mechanical engineering services were overpaid by R1 407 418.73 for services rendered by them. The overpayment was approved and authorized by the first defendant, and is calculated as follows:

46.1 Payments as per BAS at December 2013 totaled R3 676 448.05;
less

46.2 Vat [of R3 676 448.05] calculated at R451 493.62; less

46.3 Disbursements as per invoices at December 2013 totaling
R852 470.58; less

46.4 Adjusted professional fee based on fee base provided by R&G of
R1 137 906.00; plus

46.5 VAT in the amount of R172 840.89.

47. **Igoda Projects (Pty) Limited** which provided electrical engineering services were overpaid by R88 943.78 which was approved and certified by the first defendant. The overpayment is calculated as follows.

47.1 Payments as per BAS at December 2013 totaled R2 517 482.72;
less

47.2 Vat [of R2 517 482.72] calculated at R309 164.54; less

47.3 Disbursements as per invoices at December 2013 totaling R979
097.32; less

47.4 Adjusted professional fee based on fee base provided by R&G of R1 151 200.00; plus

47.5 VAT in the amount of R10 922.92.

48. The total overpayment unlawfully authorized and certified by the first defendant and which DPW paid when it ought not to have, but for the unlawful conduct of the first defendant, is R13 674 511.50.

49. In the premises DPW has suffered financial loss in the sum of R13 674 511.50

H. Claim E

49.1 During the period of the first defendant's appointment, the first defendant proceeded to authorize payments to Moneymine Investments 310 CC and Bonelena Construction and Projects (Pty) Ltd ("Bonelena") in the amount of R54 825 513.00 in respect of civil works purportedly undertaken.

49.2 In terms of the relevant provisions of section X1 of annexure "A" hereto, the first defendant was required to safeguard the second defendant's interests under the building contract.

- 49.3 In breach of the aforesaid provisions, the first defendant wrongfully, unlawfully and negligently certified these payments in the absence of any breakdown regarding how this amount was calculated.
- 49.4 As a result of the first defendant's wrongful, unlawful and negligent conduct the second defendant paid for works in circumstances where it could not firstly, ascertain what the specific scope of such works were; and secondly, whether or not such works were in fact done.
- 49.5 As a result of the first defendant's breach, the second defendant paid the sum of R54 825 513.00 to the contractors which it was not obliged to pay.
- 49.6 Having regard to the circumstances set out above, it is just and equitable that the first defendant should be ordered to account for certification of such works.
- 49.7 Alternatively to 50.5, having regard to the circumstances as set out above, it is just and equitable that the first defendant should be ordered to repay the amount of R54 825 513.00 for such works.

50. During the period of the first defendant's appointment, the first defendant proceeded to authorize payments to Igoda in the amount of R5 347 999.00 in respect of electrical works purportedly undertaken.

50.1 In terms of the relevant provisions of section X1 of annexure "A" hereto, the first defendant was required to safeguard the second defendant's interests under the building contract.

50.2 In breach of the aforesaid provisions, the first defendant wrongfully, unlawfully and negligently, certified these payments in the absence of any detailed breakdown regarding how this amount was calculated.

50.3 As a result of the first defendant's wrongful, unlawful and negligent conduct the second defendant paid for works in circumstances where it could not firstly, ascertain what the specific scope of such works were; and secondly, whether or not such works were in fact done.

50.4 As a result of the first defendant's breach, the second defendant paid the sum of R5 347 999.00 to service providers which it was not obliged to pay.

50.5 Having regard to the circumstances as set out above, it is just and equitable that the first defendant should be ordered to account for certification of such works.

50.6 Alternatively to 51.5, having regard to the circumstances as set out above, it is just and equitable that the first defendant should be ordered to repay the amount of R5 347 999.00 for such works.

51. In the premises DPW has suffered financial loss in the sum of R60 173 512.00.

I. Claim F

52. During the period of the first defendant's appointment, the first defendant proceeded to authorise payments to Bonelena in the amount of R1 182 999.99 in respect of work not done but charged for in respect of the outer perimeter fence.

52.1 In terms of the relevant provisions of section X1 of annexure "A" hereto, the first defendant was required to safeguard the second defendant's interests under the building contract.

52.2 In breach of the aforesaid provisions, the first defendant certified these payments in the absence of any proof that the work was done.

52.3 As a result of the first defendant's breach, the second defendant paid the sum of R1 182 999.99 to Bonelena which it was not obliged to pay.

52.4 Having regard to the circumstances as set out above, it is just and equitable that the first defendant should be ordered to pay the sum of R1 182 999.99.

53. During the period of the first defendants appointment, the first defendant proceeded to authorise payments to Betafence Projects South Africa (Pty) Ltd ("Betafence") in the amount of R82 143.22.00 in respect of standing time which was not due and payable.

53.1 In terms of the relevant provisions of section X1 of annexure "A" hereto, the first defendant was required to safeguard the second defendant's interests under the building contract.

53.2 In breach of the aforesaid provisions, the first defendant certified these payments in the circumstances where such payments were not due and payable.

53.3 As a result of the first defendant's breach, the second defendant paid the sum of R82 143.22 to Betafence which it was not obliged to pay.

53.4 Having regard to the circumstances as set out above, it is just and equitable that the first defendant should be ordered to pay the sum of R82 143.22.

54. In the premises DPW has suffered loss in the sum of R1 265 143.21

WHEREFORE THE PLAINTIFF prays for judgment and order as follows:

- (a) An order declaring that the appointment by the then Director-General of the second defendant of the first defendant as the architect and principal agent in respect of the security upgrades at Nkandla is inconsistent with the provisions of section 217 of the Constitution, section 38(1)(a)(iii) of the PFMA and second defendant's Supply Chain Management Policy and Procedures, and therefore invalid and of no force and effect.
- (b) An order declaring that the contract concluded by or on behalf of the then Director General of the second respondent and the first defendant which is annexure "A" hereto is invalid and of no force and effect.

- (c) Directing that it is just and equitable that the first defendant should pay to National Treasury the following amounts which represents financial loss suffered by the second defendant as a result of the unlawful, wrongful and negligent conduct of the first defendant:

- (i) R68 506 106.00 in respect of claim B;
- (ii) R11 705 243.78 in respect of claim C;
- (iii) R13 674 511.50 in respect of claim D
- (iv) R60 173 512.00 in respect of claim E;
- (v) R1 265 143.21 in respect of claim F.

[The claims are collated in Table 2 which is annexed hereto marked "C"].

- (d) Interest on the above amounts at the rate of 15.5% calculated from the date of judgment to date of payment.
- (e) Costs of suit.

- (f) Further and/or alternative relief which the honourable Court considers appropriate.

DATED AT PIETERMARITZBURG on this TH 11 day of August 2014.

Counsel for plaintiff



I V Maleka SC

P Ngutshana



Department:
Public Works
REPUBLIC OF SOUTH AFRICA

Type postal address of HO/Regional Office here, e.g.: Private Bag X65, Pretoria, 0001
Type street address of HO/Regional Office here, e.g.: Central Government Offices, Cnr Vermeulen and Bosman Streets, Pretoria

From: DURBAN REGIONAL OFFICE
Tel: (031) 314 7000 Fax: (031) 337 9020 e-mail: jean.rindel@dpw.gov.za

Enquiries: DJ Rindel Ref:

Messrs Minenhle Makhanya Architects
PO Box 19980
Ashburton
4000

Date : 10 August 2009

Dear Sir/Madam

DURBAN : PRESTIGE PROJECT A : INSTALLATION OF SECURITY AND RELATED SERVICES. (WCS047455)

(NOTE: File reference numbers for all projects will be provided to you at the briefing meeting if not indicated above.)

1. You are hereby invited to perform the professional services on the above-mentioned project as set out in **Section A**, subject to the following conditions:

1.1 Professional fees

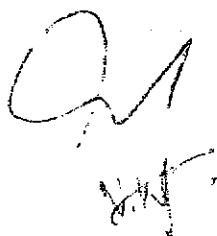


In consideration of services rendered, you will be remunerated as set out in **Sections A and X2**.
The Department reserves the right to set off against any amount payable to you, any sum which is owing by you to the Department in respect of this or any other project.

1.2 Typing, printing and duplicating work as well as forwarding charges

The reimbursement tariffs for typing, printing and duplicating work, as well as forwarding charges, are set out in **Section B**.

1.3 Travelling and subsistence arrangements and tariffs

Travelling and subsistence arrangements and the tariffs which are payable are as set out in **Section C**.




(version T&S/2009-02)

In the case of your firm being a **sole proprietor**, the principal of the firm, with the acceptance of this invitation, in his/her personal capacity, (i) accepts full liability for the due fulfilment of all obligations in respect of the above-mentioned appointment; and (ii) hereby indemnifies the Department, and undertakes to keep the Department indemnified, for a period of ten (10) years beyond the issuing of the Final Approval Certificate/Final Delivery Certificate (whichever is applicable), in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the firm's intentional and/or negligent acts, errors and/or omissions in its performance on this appointment.

In the case of your firm being a **partnership** consisting of only natural persons, the partners of the firm, with the acceptance of this invitation, jointly and severally, in their personal capacity, (i) accept full liability for the due fulfilment of all obligations in respect of the above-mentioned appointment; and (ii) hereby indemnify the Department, and undertake to keep the Department indemnified, for a period of ten (10) years beyond the issuing of the Final Approval Certificate/Final Delivery Certificate (whichever is applicable), in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the firm's intentional and/or negligent acts, errors and/or omissions in its performance on this appointment. The principals of the firm, with the acceptance of this invitation, also renounce the benefit of the *exceptionis non causa debiti, non numeratae pecuniae* and *excussionis* or any other exceptions which may be legally raised against the enforceability of this indemnification.

In the event of your firm being a **company, close corporation or any other enterprise with limited liability (including partnerships consisting of other than only natural persons)**, you must indemnify the Department as described in **Section D** hereof, in confirmation of which **Section D** must be duly completed and signed by each director/member and returned to this Department together with the acceptance of this invitation. The requirement that firms with limited liability hold Professional Indemnity Insurance as indicated in **Section D** is not intended to limit such firm's liability to the value of the Professional Indemnity Insurance held.

The Department must be notified in writing immediately of any change in partnership, directors of companies or members of close corporations. The Department reserves the right to decide which partner, director or member should continue with the service under this agreement in the event of any change in partnership, directors of companies or members of close corporations.

1.5 **Appointment of firms in association/consortium/team of consultants/joint venture in the same discipline**

The conditions pertaining to the appointment of firms in association/consortium/team of consultants/joint venture in the same discipline are set out in **Section E**.

1.6 **Appointment as "agent" for the Department under the Construction Regulations, 2003**

In the case of you/your firm being appointed to fulfil the duties and responsibilities as "agent" of the Department (refer to par 5 (f) of **Section A**) in accordance with Regulation 4.(5) of the Construction Regulations, 2003, as promulgated under the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), the forms in **Section F** must be duly completed, signed and returned to the Department together with the acceptance of this invitation. This will serve to confirm that you/your firm have/has the necessary competencies and/or resources as required in terms of the Construction Regulations or that you will acquire such competencies

and/or resources by means such as entering into an agreement with a competent person or consultancy, etc.

1.7 Deferment and/or termination of appointment

1.7.1 The Department reserves ~~the right to terminate this appointment or~~ temporarily defer the work, or any part thereof, at any stage of completion.

1.7.2 The appointment, or any part thereof, shall be considered as having been terminated:

- (a) if you are specifically so notified by the Department; or
- (b) where the project is deferred or delayed for a period of longer than two (2) years due to reasons not attributable to yourself; or
- (c) where the Department defers the project and instructions to resume or reinstate the work are not issued within two (2) years of the deferment instruction; or
- (d) if instructions, necessary for you to continue with the work after a delay or deferment instruction, are not received from the Department within six (6) months after such instructions were requested by you.

1.7.3 Should the agreement between you and the Department, or any part thereof, be terminated by either of the parties due to reasons not attributable to yourself and notwithstanding the provisions of any published fee scale or regulation promulgated in this regard:

- (a) you will be remunerated for the appropriate portion of the work completed, calculated in accordance with the agreed fee scale as set out in the **X-section(s)** and based on the estimated cost of the project, or applicable part thereof, at the time of execution provided that:
 - (i) the estimate shall not exceed any cost limit(s) which you have agreed with the Department; or
 - (ii) no termination levy or similar percentage levy figure will be paid by the Department as a result of the termination of the appointment, irrespective of any reference thereto in any published fee scale or regulation;

(b) you will be paid a surcharge equal to such losses (excluding future profits) and expenses as may have been caused by such termination of the agreement as can be substantiated by you.

1.7.4 After an instruction for the temporary deferment of the work is issued to you, or a delay occurs causing the deferment of the work to the project, an interim payment for the appropriate part of the work completed at that stage may be claimed. This shall be calculated in accordance with the agreed fee scale as set out in the **X-section(s)** and based on the estimated cost of the project, or part thereof, at the time of execution provided that the estimate shall not exceed any cost limit(s) which you have agreed with the Department.

1.7.5 Should the work to the project be reinstated or resumed without significant change:

- (a) within a period of two (2) years from the date of a deferment, the fee paid in accordance with the preceding paragraph as an interim payment will be regarded as part payment of the final amount due,

calculated on the estimated cost of the project or the appropriate part thereof;

- (b) no fee shall be charged in respect of fluctuation in building costs during the period of deferment in respect of completed work and the balance of the fee due shall be calculated on the cost of the project;
- (c) and should additional services be required from you following the reinstatement or resumption of the deferred work, remuneration for such additional services may be considered on a *quantum meruit* basis
- (d) the remuneration must be agreed in writing by the Department via the Departmental Project Manager before this work is undertaken.

1.7.6 Should it be necessary to remunerate you for a portion of the work, the estimated cost of such relevant part of the project shall be the estimate approved or an acceptable tender price received and accepted by the Department. The Department's decision regarding the value thereof is final and binding. Such estimated value shall exclude any allowances in respect of contingencies, Contract Price Adjustments, plant and equipment as well as such items that might be described in the **X-section(s)**.

1.7.7 Should the work, or any part thereof, be damaged or destroyed at any stage prior to the completion of the project due to operations of war, fire, storm, flood or other causes over which you could not reasonably have had control, and the work is reinstated, the Department shall pay you an additional fee to be negotiated at such time in accordance with the nature and scope of the professional services required.

1.8 Project Execution Plan

The professional services are to be rendered in accordance with the declaration you made in terms of the Project Execution Plan (PEP), if applicable. In the event of non-compliance with the approved PEP, the Department may act according to the provisions contained in the Policy Document of its Consultants Roster System.

Should there be any discrepancies between this Letter of Invitation and the Project Execution Plan, the former shall take precedence.

1.9 Agreement

The conditions, as set out in this letter, together with the Sections mentioned herein, as listed in **Section A**, together with your letter of acceptance in terms of item 2 below, constitutes the entire agreement between you and the Department. No variation thereto will be of any force and effect unless agreed to in writing and signed by the duly authorised representatives of both parties.

It is important to note that the professional work, expected from you in terms of this agreement, will be performed under the management and control of this Department's Project Manager who will brief you and co-ordinate/manage the project. All liaisons in terms of this agreement, **including the acceptance of this invitation**, must be done with the appointed Departmental Project Manager and accounts for work rendered must be submitted to the said Departmental Project Manager. The firm(s) appointed as Consultant(s) will be required to co-ordinate all their work with the appointed Principal Agent. In the event of the Department appointing a private Project Manager from the private sector on this project, this will be clearly indicated in **Section A**. In such cases you will be expected to report to such private Project Manager as will be explained at the briefing meeting and

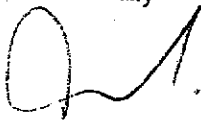
through supplementary documents that may be issued to you, as and when applicable.

1.10 Tax Clearance Certificate

An original, valid Tax Clearance Certificate must be attached to your letter of acceptance. Failure to adhere to this stipulation may cause this agreement not to be legally constituted in terms of paragraph 3 below. Copies of Tax Clearance Certificates will not be accepted.

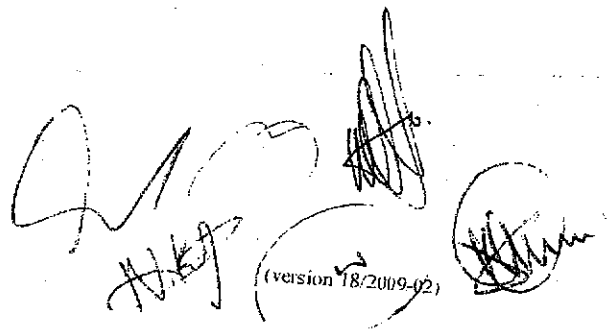
2. Should you accept this invitation you must **advise the Departmental Project Manager** accordingly in writing within fourteen (14) calendar days from the date of this letter, to which must be attached this letter together with all Sections, as listed in **Section A** hereof, duly initialled at the right hand bottom corner of each page as well as the information in writing required in respect of **Sections D, E and F** hereof, where applicable and the original, valid Tax Clearance Certificate.
3. This agreement will only be legally constituted once you have fully complied with all terms and conditions of this letter with specific reference to paragraph 2.
4. If you are unable to accept the invitation, kindly **advise the Departmental Project Manager** accordingly in writing within fourteen (14) calendar days from the date of this letter, simultaneously returning all documentation presented to you.

Yours faithfully



for DIRECTOR-GENERAL

DIRINDGZ
2009/9/11



(version 18/2009-02)

SECTION A

WCS...

GENERAL CONDITIONS AND INFORMATION

1. PROFESSIONAL TEAM (# indicates the discipline acting as Principal Agent)

The following Consultants are being invited to be appointed to the project to form the "Professional Team":

ARCHITECTS:	MINENHLE MAKHANYA ARCHITECTS
QUANTITY SURVEYORS:	R & G CONSULTANTS
STRUCTURAL ENGINEERS:	
CIVIL ENGINEERS:	IGODA PROJECTS (ELECTRICAL ENGINEERS)
ELECTRICAL ENGINEERS:	IBHONGO CONSULTING CC
MECHANICAL ENGINEERS:	
PROJECT MANAGER:	
OTHER (SPECIFY):	

The required professional services will be executed by the Professional Team under the control and management of the designated Departmental Project Manager who, at the time of invitation to perform professional services, will be MR DJ RINDEL. The Department reserves the right to replace the mentioned Departmental Project Manager with another member of its staff or any individual/firm from the private sector should it be deemed necessary at any stage during the execution of the project.

2. EXTENT OF AGREEMENT

The following documents shall constitute the full agreement between you and the Department:

- the Department's letter of invitation;
- sections A, B, C, D, E, F, X1 and X2 to the letter of invitation;
- your letter of acceptance accompanied by the duly completed and signed Sections D and F, if applicable;
- written nomination of the representative firm according to Section E, if applicable.

3. INTERPRETATION

In this document, except where the context otherwise requires or indicates:

- the masculine includes the feminine,
- the singular includes the plural, and
- any reference to a natural person includes a body corporate, a firm or an association.

4. SPACE NORMS AND COST LIMITS

Space and cost norms (type here "are" or "are not" as the case may be) applicable on this service.

The space norms and cost norms of the Treasury Committee for Building Norms and Cost Limits, or norms determined by the Department, when applicable to this/these project(s) are the norms as set hereunder and shall not be exceeded under any circumstances. Any re-planning resulting from the norms set being exceeded shall be for your account.

Each norm is to be controlled separately and cross funding shall only be allowed in cases where prior written permission has been granted.

The Professional Team must apply cost control and submit elemental estimates at each stage, reduced to a common date and compared with the approved norm(s). You must set appropriate procedures in place with the other members of the Professional Team to ensure compliance in this regard. A Cost Norm Reconciliation Statement (or Norms Calculator) is obtainable on the Department's Website at <http://www.publicworks.gov.za/> under "Consultants Guidelines", item 3 or from the Project Manager.

Space must also be controlled and reconciled with the approved limit(s). All planning units are to be provided and if not, this must be pointed out.

The Department must, at least at completion of each planning stage, be provided by the Principal Agent with certificates which specify that the space norms and cost norms are not being exceeded before the next stage may be proceeded with.

The norm(s) with which the final value(s) of this project (excluding Contract Price Adjustment) shall comply, (type here "is as follows" "are as follows" if in the plural or type "not yet known" or type "N/A" if the project is not subject to norms):

(a) SPACE NORMS(S):

ASM/GSM*

(b) COST NORM(S):

(i) Building(s): _____ m²

(ii) Supplementary costs: _____ SCU

Security _____ SCU

Land improvements other than buildings _____ SCU

Recreational facilities _____ SCU

Other: _____ SCU

(iii) TOTAL: _____ SCU

The approved total cost norm amounts to: (type amount here or N/A) which includes professional fees. The norm is coupled to the (type name of index here, usually "BER/MFA" or N/A) building cost index as at date (type the month and year of the index used here or N/A).

5. COMPLIANCE WITH LEGISLATION

This section applies to legislation emanating from national and provincial governments as well as that of any local authorities in whose area of jurisdiction the subjects of the appointment falls and which has a bearing on the activities and facilities under this appointment.

- (a) All the applicable legislation, which do not specifically allow discretion in respect of compliance by the State, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary. (Refer *inter alia* to Section 41 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)).
- (b) Should any applicable legislation allow discretion in respect of compliance by the State, it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the appointed Professional Team by the Departmental Project Manager.
- (c) By the acceptance of this appointment, you undertake to ensure that your actions and outcome thereof, including but not limited to, the facilities to be affected by the intended appointment shall be in complete accordance with all relevant legislation and regulations and upon delivery, will function as required by said relevant legislation/regulations. Your actions and the outcome thereof will in no way be detrimental to the health and safety of the occupants or persons present therein or in the vicinity thereof. Similarly it will not be detrimental to any aspects of the environment in its structure or operation if operated as specified by you in operation manual(s). The relevant legislation/regulations meant herein, as amended, consist of *inter alia* the following, but not limited to:

- Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);
- Environmental Conservation Act, 1989 (Act 73 of 1989);
- Occupational Health and Safety Act, 1993 (Act 85 of 1993);
- National Building Regulations and Standards Act, 1977 (Act 103 of 1977);
- Electricity Act, 1996 (Act 88 of 1996);
- National Water Act, 1998 (Act 36 of 1998);
- National Environmental Management Act, 1998 (Act 107 of 1998);
- Post Office Act, 1998 (Act 124 of 1998) (telephone installations);
- National Heritage Resources Act, 1999 (Act 25 of 1999);
- Fire Brigade Services Act, 2000 (Act 14 of 2000);
- Local Government Ordinance 1939 (Ordinance 17 of 1939);
- the latest issue of SABS 0142: "Code of Practice for the Wiring of Premises";
- the Regulations of the local Gas Board, where applicable and
- all regulations promulgated under the above Acts.

This will be a continuous process throughout the appointment, which will manifest itself during the following phases:

- (i) development of plans and documentation;
- (ii) supervision of any contractors under the appointment;
- (iii) ensuring compliance of the end product;
- (iv) compiling and issuing of Instruction/Operational Manuals indicating *inter alia* what the legal and safety requirements entail for the user(s)/operator(s) of the facilities;
- (v) providing instruction to the intended users/operators.

- (d) In compliance with Section 37 (2) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) it is agreed that, by virtue of the acceptance of this appointment, you accept full and complete responsibility (both criminally and civilly) for your acts and omissions as well as those of your employees as intended in Section 37 of the Act and indemnify the Department against any legal action in this regard.
- (e) You undertake to ensure that Section 37 (2) of the Occupational Health and Safety Act, 1993 will similarly apply to the agreement with any Contractor(s) and Subcontractor(s) inclusive of indemnifying the Department against any legal action regarding the actions and/or omissions by you.
- (f) Should you be appointed as Principal Agent or should you be the only Consultant appointed on this service, you are hereby also appointed as the Department's "agent" in accordance with Regulation 4.(5) of the Construction Regulations, 2003 (published in Government Gazette No. 25207 of 18 July 2003) as promulgated under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) with all the duties and responsibilities described in such Regulations. In such instance, the forms in Section F must be duly completed, signed and returned together with the acceptance of this invitation. Remuneration for your appointment as the Department's agent in this regard, will be as defined in Section X2.

6. PREFERENTIAL PROCUREMENT

You will be required to perform all duties necessary for the implementation of Preferential Procurement in terms of the Department's affirmative procurement policy or similar provisions as may be required from time to time.

7. TARGET DATES AND TIMES

You will be expected throughout to give preference to the execution of the work involved in this commission.

The Principal Agent must submit a programme indicating the planning times and target dates for the completion of the different stages of the project within one week of the date on which the briefing meeting took place. The format of the programme will be handed to you during that meeting.

On receipt of the programme, it will be assumed that it had been compiled by the Principal Agent in collaboration with the Professional Team. In the event of the programme being acceptable to the Department you will be notified accordingly. If the programme is not acceptable, the Department will immediately negotiate another programme with the Principal Agent.

During the construction phase of the project it will be expected of the Principal Agent to obtain a construction programme from the main Contractor to continuously monitor his/her progress against that programme for compliance and to take which ever steps have been described in the relevant manual and the "Working Guideline for Project Managers". This should be done in collaboration with the rest of the Professional Team, should the progress not be according to the said programme.

8. LANGUAGE MEDIUM

All documents are to be compiled in English.

9. PROFESSIONAL FEES

You will be remunerated for services rendered according to:

- The published scale of fees as fully set out in Section X2 and/or time basis fees, as well as in the "Rates for Reimbursable Expenses", as amended from time to time, available from the Departmental Project Manager: all excluding value added tax.

All fee accounts must be accompanied by an updated original written certification by the Quantity Surveyor, if appointed, of the amount(s) on which your fees are based. The onus, however, rests on you to calculate your fees on the appropriate value and according to the correct fee scale, read in conjunction with your Letter of Invitation.

For all services provided on a time basis, time sheets, giving full particulars, need to be submitted with fee accounts.

You will be entitled to charge interest on all original fee accounts, correct and due, not settled within 30 calendar days from the date of receipt. Interest on the unpaid amount will be calculated at the prime interest rate charged by your bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment. Such original fee account will be deemed submitted when received by the Department and settled when electronically processed by the Department.

You may submit accounts for services rendered on successful completion of each stage of work. Interim accounts will only be considered during the construction stage of the Works and then not more frequent than quarterly. Payment of accounts rendered will be subject to the checking thereof by the Departmental Project Manager. The Department reserves the right to amend the amounts claimed in order to conform to the published scale of fees and/or rates stipulated in this letter of invitation and its Sections.

Disbursements regarding site personnel can be submitted on a monthly basis.

Unless otherwise agreed in writing, you will not be entitled to any fees on the amount paid for any connection(s) from the local authority/supplier/service provider, whether this forms part of the building contract or not.

10. EXTENT OF SERVICE

The extent of the service required from you is set out in Section X1.

11. EXECUTION OF THE WORK

The work must be executed in your own office. No portion of the work may be performed by a person employed by the State. No portion of the work may be sublet to any other person or persons without the prior written approval of the Department.

You must avail yourself of software to be used in the project documentation for mutual compatibility. Specific requirements for compatibility are specified in the Departmental manuals for the relevant discipline.

It will be your responsibility to inform the Department immediately of any change in the composition or capacity of your firm.

Should bills of quantities be required on this service the Quantity Surveyor, if appointed, will be required to prepare the bills of quantities for all work which will include *inter alia* electrical, mechanical and any other engineering work.

12. LOCAL CONTENTS

It is the policy of the Department to give preference to materials and equipment of South African manufacturers. You are requested to ensure that, wherever possible, your designs are based on locally manufactured equipment and materials which can meet requirements at competitive prices.

13. RESPONSIBILITY

- (a) Although your documents may be scrutinised by departmental specialists, this shall in no way relieve you of your professional responsibility for the proper and prompt execution of your duties. In the event of professional default or negligence, the Department shall have the right to claim compensation or damages. The Department shall also be entitled to have any documentation or calculations verified by other experts. In the event of any errors therein being proven, you may be held liable for costs resulting therefrom.
- (b) During assessment of any existing facilities, which may have a direct bearing on the appointment, you shall determine deficiencies with such facilities in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), the SABS 0400 fire regulations of the local authorities, which may be involved, etc. and recommend measures to rectify those during the project execution phase.
- (c) You shall notify the Departmental Project Manager of any transgression of *inter alia* the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and environmental legislation during your operation on the site pertaining to the appointment regardless of who may be involved.

14. INCAPACITY OR DEFAULT OF THE APPOINTED RESPONSIBLE FIRM/PERSON(S)

In the event of you becoming incapacitated or if you should die or for any other reason are no longer able or fail to perform your duties under this agreement or if, in the opinion of the Department, the progress of the work or the quality thereof is not satisfactory, or if you accept a position with another firm or body thereby closing down your office, the Department is entitled, if it so elects, to cancel this appointment and to apply the provisions of relevant legislation without prejudice to any other rights it may have. The Department reserves the right to claim damages from you for these projects where the latter fails or neglects to discharge his obligations in terms of this agreement.

No claims for disbursements will be considered if, in the opinion of the Department, these are connected with the malperformance on your part or your inability to properly document, co-ordinate or manage the work.

15. SEQUESTRATION, LIQUIDATION AND JUDICIAL MANAGEMENT

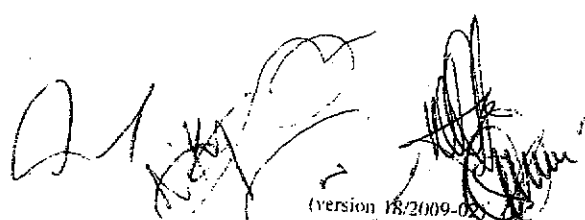
If your estate is sequestrated or liquidated or if you are placed under judicial management or an administration order is issued against you by a court, the Department shall have the right to make other arrangements as it sees fit for the completion of the professional services specified herein and to recover any additional cost from your estate without prejudice to its rights to lodge claims in respect of damages suffered.

16. DISCLOSURE OF INFORMATION

With the acceptance of this appointment you specifically undertake not to furnish information of any kind whatsoever at any stage during the validity of this appointment or any period thereafter in respect of the Works to any person or organisation outside of this Department and its authorised agents, except in cases where you have been authorised thereto in writing by the Department.

17. COPYRIGHT

The copyright of all documents, whether in hard copy and/or electronic format, prepared by you in terms of this appointment shall be vested in the Department, which shall have the right to their use on other projects for which you have not been appointed. Provided that where such documents are used without your prior knowledge and consent, such re-use shall be solely at the Department's risk and you will in no way be held liable (either in contract or in delict) by the Department or any other party whatsoever as a result of the re-use of your documentation. No fees resulting from such re-use shall accrue to you.



18. SECURITY CLEARANCE

WGS

It is an explicit condition of this appointment that partners, directors and/or the members of staff who will have an insight into the planning of projects requiring a security clearance, be kept to a minimum and that such persons will not object to be submitted to a security clearance, if the Department so requires.

If the latter is applicable, the necessary forms will accompany this letter. These forms must be completed and accompany your acceptance of this appointment. It is important to furnish information which is complete in every respect.

In case the authority responsible for the clearance is, for security reasons, not satisfied with the classification obtained by any of the staff members of your firm, it will be a further condition of this appointment that none of such staff members be involved with any aspect of the project.

All documents pertaining to these projects must be stored in a safe place when not in use so as to ensure that the level of security of the projects is maintained.

The State will not accept liability for any costs in this regard.

FINGER PRINTS (except Defence projects)

Persons of whom security clearance is required can obtain a finger print form SAP 91(a) from any police station. Kindly ensure that the police official responsible for taking the finger prints certifies the form since absence of the certification will result in the form being unacceptable.

19. "AS BUILT" DRAWINGS (RECORD DRAWINGS), ELECTRICAL COMPLIANCE CERTIFICATES AND OCCUPATION CERTIFICATES BY LOCAL AUTHORITIES

It is a condition of this appointment that for all services covered by this appointment you are required to:

- (a) prepare or obtain the "as built" drawings on the prescribed media, the cost of which is included in your tariff of fees, including the computer assisted drawing records for all facets/disciplines involved in the project;
- (b) for any and all electrical installations pertaining to this appointment, ensure that the Contractor(s) furnish the Certificates of Compliance for the electrical installation(s) prescribed by the SABS 0142 Standard;
- (c) for any and all new buildings and substantial upgrading, alterations or extensions to existing buildings, obtain, on behalf of the Department, an Occupation Certificate (as required in Section 14.(4)(a) of the National Building regulations and Building Standards Act, 1977 (Act 103 of 1977)) from the local authority involved;
- (d) at the onset of the work on the project, you must establish the need for the complete electrical installation of the facility(ies) under consideration to be assessed and certified accordingly. The Departmental Project Manager must be advised in writing accordingly.

(These must be handed to the Departmental Project Manager for incorporation into the formal Departmental building records. This is to occur within three months from First Delivery/Completion Certificate and accepted by the Department as correct.)

Should these requirements not be met, you and the rest of the Professional Team will not be eligible for the final payment in respect of this appointment. Should you fail to comply herewith, the Department retains the right to reconsider your continued position on the Consultants' Roster, which may influence your opportunity for further appointments.

20. FINAL DISPOSAL OF DOCUMENTS

Upon approval and finalisation of the Final Account of projects requiring a security clearance, it is a requirement that you forward to the Department all documents relating to this service. The same may be requested on any other Departmental project.

SECTION B**REIMBURSEMENT TARIFFS FOR TYPING, PRINTING, DUPLICATING WORK AND FORWARDING CHARGES**

The costs of typing, printing and duplicating work in connection with the documentation which must of necessity be done, except those which must in terms of the relevant Manual or other instructions be provided free of charge, shall be reimbursable at rates applicable on the time of the execution of such work. The "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Department's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" or from the Departmental Project Manager.

1. TYPING AND DUPLICATING

- (a) If you cannot undertake the work yourself, you may have it done by a firm which specialises in this type of work and you shall be paid the actual costs incurred upon submission of statements and receipts which have been endorsed by you confirming that the tariff is the most economical for the locality concerned.
- (b) If you undertake the work yourself, you shall be paid in respect of actual expenses incurred subject to the maximum tariffs per A4 sheet as set out in Table 1 in the "Rates for Reimbursable Expenses".
- (c) Typing and duplicating expenses shall only be refunded in respect of the final copies of the following documents namely formal reports, formal soil investigation reports, specifications, feasibility reports, bills of quantities, material lists, minutes of site meetings and Final Accounts. The cost of printed hard covers shall only be paid in respect of documents which will be made available to the public such as bills of quantities and specifications or where provision of hard covers is specifically approved.
- (d) The typing of correspondence, annexures and covering letters are deemed to be included in the general fees and hourly rates paid.

2. DRAWING DUPLICATION

- (a) For drawing duplication you may claim the standard rate as set out in Table 2 in the "Rates for Reimbursable Expenses" or you may claim according to the provisions as in (b) or (c) below.
- (b) If you undertake the duplication of drawings, using your own duplication equipment, you shall be paid the actual cost incurred on condition that it is not higher than the lowest of three quotations of local firms doing drawing duplication in your locality. Such quotations must accompany your account.
- (c) If you do not undertake your own drawing duplication, you shall be paid the lowest of three quotations of local firms doing plan printing in your locality. Such quotations must accompany your account.
- (d) Should there not be three firms doing drawing duplication in your locality, it must be mentioned on your account and the available quotation(s) must then accompany your account.

3. FORWARDING CHARGES

- (a) Only the charges in respect of the forwarding of parcels by courier or air freight on special request by the Department will be refunded, provided that such charges will not be refunded if the request had been made as a result of a delay caused by you.
- (b) The cost of postage, telexes, telegrams, facsimile transmissions, telephone calls, etc, is deemed to be included in the general fees and hourly rates paid.

SECTION C**TRAVELLING AND SUBSISTENCE ARRANGEMENTS AND TARIFFS OF CHARGES**

The "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Department's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" or from the Departmental Project Manager. These expenses are reimbursable at rates applicable on the time of the actual execution of the specific service.

1. GENERAL

You may visit the site of the Works at any time which is deemed necessary without approval, but you must arrange with the Departmental Project Manager for the necessary authority to undertake any other journeys in connection with the execution of your duties and in respect of which you wish to claim payment. You need only obtain approval once to use a certain mode of transport between specified points. Thereafter approval for each journey must be obtained, except in cases where the destination is situated not more than 100 km from your office, you may by way of a single application apply to undertake more than one journey.

Where the destination is situated less than 100 km from your office, it is accepted that you will make use of private motor transport.

In cases where the destination is situated more than 100 km from your office, you must make a comparison of the cost of private motor transport with that of air transport (taking into account transport costs, subsistence allowances, the savings effect of Consultants travelling together and remuneration for chargeable travelling time) so that the use of the most economic means of travel may be approved.

In determining the most economical means of travel, the Consultants are expected, *inter alia*, to travel together where practicable, for attending co-ordination, planning and site meetings. If you opt to use a mode of travel, other than the most economical mode of travel, the Department will not reimburse the additional cost thereof.

With the acceptance of this invitation, the Consultant indemnifies the Department against any claims by himself/herself/itself, his/her/its employees and/or representatives, their dependants and/or any third parties in respect of any and all actions, proceedings, liability claims, damages, costs and expenses resulting from injuries or death suffered and/or in respect of claims of any other nature that may arise from their use of any mode of transport on the project mentioned herein.

As the tariffs referred to hereunder are adjusted from time to time, accounts must be calculated at the tariff applicable at the time of the expenditure.

Where journeys and resultant costs are in the Department's opinion related to a Consultant's malperformance or failure, in terms of this appointment, to properly document or co-ordinate this work or to manage the Contract, no claims for such costs will be considered.

2. TRAVELLING TIME

Fees for travelling time are as set out in Table 8 in the "Rates for Reimbursable Expenses".

Fees are payable for travelling time at the tariff, as set out in Section X2 under "Time Basis Fees", but only to the extent to which it exceeds two hours (in other words: the total time for a return trip minus 2 hours). In the case of an appointment on an hourly basis, travelling time will be fully reimbursed. No travelling time will be paid in respect of journeys to Head Office or the office of the Departmental Project Manager without prior approval in writing.

3. TRAVELLING COSTS

Fees for travelling costs are as set out in Table 3 in the "Rates for Reimbursable Expenses".

Travelling costs will be refunded for the full distance covered per return trip measured from the office of the firm appointed.

Compensation for the use of private motor transport will be in accordance with the Government tariff for the relevant engine swept volume (up to a maximum of 3000 cubic centimetres) prescribed from time to time and as set out in Table 3 in the "Rates for Reimbursable Expenses".

4. HIRED VEHICLES

In cases where use is made of hired vehicles, the most economical sized vehicle available is to be used but compensation shall nevertheless be restricted to the cost of a hired car not exceeding a capacity of 1300 cc. Where use of a special vehicle is essential (e.g. four track, minibus to accommodate more people), prior approval in writing must be obtained from the Departmental Project Manager.

5. SUBSISTENCE ALLOWANCE

The subsistence allowances are as set out in Tables 4 and 5 in the "Rates for Reimbursable Expenses".

Only actual costs are payable in respect of absence from office of less than 24 hours.

Should the daily tariff as set out in Table 4 be inadequate, substantiated actual costs plus a special daily allowance as shown in Table 5 for incidental expenses, may be claimed. Please note that you may only claim according to Table 4 or Table 5. Accommodation should be limited to the equivalent of a three star hotel and no alcoholic beverages or entertainment costs may be claimed for.

FILL IN FULL NAME OF PROJECT as on WCS

WCS...

SECTION D

INDEMNIFICATION OF THE DEPARTMENT IN RESPECT OF FIRMS WITH LIMITED LIABILITY

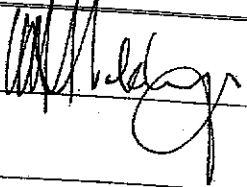
I/We, the undersigned, being *director(s)/member(s)/partner(s) of the *company with limited liability/close corporation/enterprise with limited liability known as:

MINEWHE MAKHANYA ARCHITECTS

hereby confirm that the above-mentioned entity holds professional indemnity insurance cover, from an approved Insurer, duly registered with the Finance Services Board, of not less than R1.5 million, with the first amount payable not exceeding 5% of the value of indemnity. I/We further confirm that should the professional indemnity insurance be allowed to lapse at any time or in the event of the entity not holding professional indemnity insurance at any time, then I/we, jointly and severally, in my/our personal capacity, (i) accept herewith full liability for the due fulfilment of all obligations in respect of the above-mentioned appointment; and (ii) hereby indemnify, and undertake to keep indemnified, the Department in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the aforesaid firm's intentional and/or negligent acts, errors and/or omissions in its performance on this appointment.

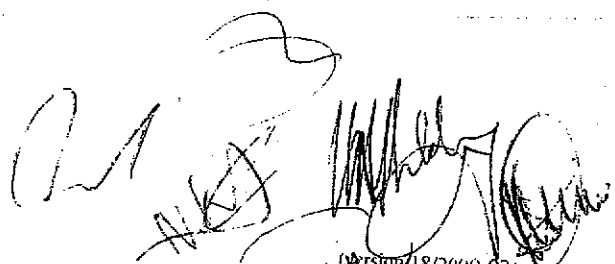
I/We undertake to keep the Department indemnified, as indicated above, beyond the Final Approval Certificate/Final Delivery Certificate by the Department (whichever is applicable) for a period of ten (10) years after the issue of such applicable Certificate.

I/We renounce the benefit of the *exceptionis non causa debiti*, *non numeratae pecuniae* and *excussionis* or any other exceptions which may be legally raised against the enforceability of this indemnification.

	NAME	CAPACITY	SIGNATURE
1.	M.N. MAKHANYA	PRINCIPAL	
2.			
3.			
4.			
5.			
6.			
7.			
8.			

DATE: 11/09/2009

* DELETE WHICH IS NOT APPLICABLE



SECTION E

CONDITIONS APPLICABLE TO THE APPOINTMENT OF FIRMS IN ASSOCIATION/CONSORTIUM/TEAM OF CONSULTANTS/JOINT VENTURE IN THE SAME DISCIPLINE

1. It is an explicit condition of this appointment that the work be executed by the following firms in association/consortium/team of consultants/joint venture in the same discipline:

(type names of all firms of the applicable discipline here or "N/A" if this appointment is for one firm only)

2. Above-mentioned firms must mutually agree on which firm will be the following:

- the representative firm (Lead Consultant) for co-ordination, liaison and correspondence with the Department;
- the leader;

the Department however reserves the right to be prescriptive in this regard, if necessary.

The Department will not be party to accommodation arrangements, legal entity (entities), insurance or the division of work/expenditure/profits of the firms in association/consortium/team of consultants/joint venture in the same discipline.

3. A written nomination of the representative firm must accompany the letters of acceptance of the appointment by all the firms concerned. The representative firm will receive all instructions, correspondence to and payments on behalf of the firms in association/consortium/team of consultants/joint venture in the same discipline. One member of the representative firm's travelling and subsistence costs for consultation visits will be reimbursed. Other members of the firms in association/consortium/team of consultants/joint venture in the same discipline will only qualify for reimbursement of travelling and subsistence costs after prior written approval thereof having been obtained.

4. The representative firm shall be entitled to a fee of not exceeding ten percent (10%) of the total fee for services rendered by the firms. (This is therefore not an additional fee.) The percentage must be mutually agreed by the firms. The apportionment of the fee to services is as stated in the tariff of fees.

5. Each partner/director/member of the firms in association/consortium/team of consultants/joint venture in the same discipline will, jointly and severally, be held responsible for the due execution of the appointment.

6. All drawings and documents issued for this service must bear the names of the firms as appointed.

7. Any diminution of staff or change in the capacity of a firm after appointment may lead to the disqualification of participation of that firm for the remaining stage(s) of the work.

SECTION F

COMPETENCIES AND/OR RESOURCES REQUIRED BY THE AGENT IN TERMS OF AND AS STIPULATED IN THE CONSTRUCTION REGULATIONS, 2003 TO FULFIL THE DUTIES AND RESPONSIBILITIES AS THE DEPARTMENT'S "AGENT"

Person (name & signature)	Qualification & Date Acquired	H&S Training & Date Acquired	COMPETENCIES	
			Field of competence	Experience From To
Person (name & signature)	Qualification & Date Acquired	H&S Training & Date Acquired		
Person (name & signature)	Qualification & Date Acquired	H&S Training & Date Acquired		
Person (name & signature)	Qualification & Date Acquired	H&S Training & Date Acquired		
Person (name & signature)	Qualification & Date Acquired	H&S Training & Date Acquired		

Note:

The word "agent" refers to the agent as stipulated in Regulation 4.(5) of the Construction Regulations, 2003 under the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

ACCESS TO TRAINING AND SUPPORTING SERVICES TO CURRENTLY APPOINTED STAFF

WCS

Person (name)	Training Institution /Facility	Relevant Training Currently Undertaken	Relevant Training Envisaged

JOINT VENTURE PARTNERS

Person (name)and JV Partner	Qualification & Date Acquired	H&S Training & Date Acquired	Experience	
			Field of competence	From To

[Handwritten signatures and initials]

EXTENT OF ARCHITECTURAL APPOINTMENT

1. SERVICES REQUIRED

The following architectural services are required:

Standard services for which an Architect is responsible in terms of stage (type here, depending on the nature of the project, the stage or stages for which the Architect is appointed, e.g: 1, 1A, 2, 3, 3A, 4 and 5) as defined hereafter. Note that the definitions hereafter have been taken from the Government Gazettes mentioned in Section X2 but altered to suit specific departmental requirements.

Should the project site be located on dolomite sub-strata and/or land, the Architect shall refer to the specific requirements contained in the Department's manual: "Appropriate Development of Infrastructure on Dolomite: Guideline for Consultants" (PW 344).

Supplementary Services, where required, will be as defined by the Department. The Department will to its sole discretion decide on what constitutes Supplementary Services, in terms of this appointment.

In the event of a Consultant Quantity Surveyor not being appointed for this project, it is required of the Consultant Architect to implement and monitor the Affirmative Procurement Policy (APP).

You are hereby appointed as (type here "Principal Agent" or "Consultant") for the stages mentioned above at the remuneration stated in Section X2.

2. DEFINITION OF STANDARD SERVICES IN RESPECT OF ARCHITECTURAL APPOINTMENT

The meaning of different project types, mentioned in the Stages here under, would be as defined in sub-section 6 of Section X2 of this letter of invitation.

The various stages of standard services for which you are responsible are, for the purposes of this appointment, defined as follows:

STAGE 1: Appraisal and definition of the project (in respect of construction (new projects), addition, adaptation, alterations, upgrading and refurbishment only)

Receive, appraise and report on the client's requirements/briefing with particular regard to site information, planning and statutory requirements.

Report, in collaboration with the Professional Team, on the space and cost norms. Compiles a cost plan and submit a detailed execution programme for the project.

STAGE 1A: Appraisal and definition of the project (in respect of repairs and renovations, rehabilitation and restoration projects only)

Receive and appraise the client's requirements/briefing. Inspect the building(s) according to the brief and submit, after co-operation with the Professional Team, a concise "Repairs and Renovations Report" on:

- (a) the extent of defects/damages;
- (b) proposed methods of remedy;
- (c) preliminary estimate (of cost) of proposed remedies;
- (d) programme of execution (time schedule).

For projects where the professional services are to be remunerated on time basis fees, the calculation of which is referred to in Section X2 hereof, the following must accompany the above report:

An estimate of the total number of hours apportioned according to the three different categories of time basis fees in paragraphs (i), (ii) and (iii) of Table 8 of the "Rates for Reimbursable Expenses", as amended from time to time and obtainable from the Departmental Project Manager, as well as the allocation thereof to each of the different stages of work deemed appropriate to complete the architectural services is required for this appointment. After consideration, evaluation and written approval by the Department of the number of hours, no account will be considered for payment in which the approved number of hours has been exceeded. However, if the Department is not in agreement with the submitted estimate, an acceptable estimate will be negotiated with you by the Departmental Project Manager. In the event of an agreement not being reached, the Department reserves the right to terminate this appointment immediately.

Note that the compilation of "as built"-documentation, in the event of existing drawings being unobtainable at the start of the project, is a supplementary service and not part of the standard services for which an Architect is responsible. The additional cost that the compilation of "as built"-documentation could generate, must be catered for and clearly identified in the above estimate, taking clear cognisance of the limitations the Department has set and described under Stage 3A below regarding the level at which the work is to be performed.

STAGE 2: Concept design and sketch plans (in respect of construction (new projects), addition, adaptation, alterations, upgrading and refurbishment only) (not applicable to repairs and renovations, rehabilitation and restoration projects)

Advised by Consultants, if any appointed, prepare a design indicating space provision, planning relationships, standards of materials intended to be used and standards and suitability of services, in sufficient detail to enable the design to be approved by the client. As Agent for the Department the Consultant will ensure compliance to/with all applicable legislative prescripts and incorporate same in the design concept. Obtain the relevant statutory authorities comment on the proposed concept design, evaluate same and include in final sketch plans.

Advise the client on the feasibility of the project as designed, the estimated cost, budget, time schedule, statutory requirements and space and cost norms certification.

STAGE 3: Design development and preliminary working drawings (in respect of construction (new projects), addition, adaptation, alterations, upgrading and refurbishment only)

After approval of the design, prepare 1:100 scale preliminary working drawings, sufficient for Consultants and specialists to proceed with their planning and to co-ordinate all work and services.

Discuss the design with the statutory authorities, including local authorities, amend drawings if necessary and supply copy of full set of drawings to relevant statutory authorities and local authorities for final comment and/or approval as may be required.

Review the budget and time schedule.

STAGE 3A: Repairs and Renovations Report development and preliminary working drawings (in respect of repairs and renovations, rehabilitation, restoration and refurbishment projects only)

After approval of the Repairs and Renovations Report and subject to the acceptance of the estimated number of hours required to execute the professional service, inspect the building(s) in greater detail and prepare 1:100 scale preliminary working drawings, sufficient for Consultants and specialists to execute their planning and to co-ordinate all work and services. Review the budget and time schedule.

If existing drawings of the building(s) can be located from the Department or local authority these should form the basis for the preparation of your working drawings. In absence of any existing drawings you are required to, after consultation with the Departmental Project Manager, measure up the building(s) and prepare "as built"-drawings at time basis fees to the Department, limited to the cost of the technical staff (i.e. the paragraph (iii) rate as specified in Section X2). The costs of drawing out the field measurements shall be deemed to be included in the percentage fee for this phase of the Architect's work. In the event of a time-based appointment the drawing out of the field measurements will be remunerated at technical level only (i.e. the paragraph (iii) rate as specified in Section X2). The Department deems the estimate of hours you have to supply, in terms of the description under Stage 1A above, to be inclusive of the hours required to produce these "as built"-drawings.

STAGE 4: Technical documentation (applicable to all projects)

Finalise full working drawings, specification and other technical documents necessary for the execution of the project. Co-ordinate, throughout the work of all Consultants and monitor progress in accordance with the agreed time schedule. Certify space and cost norms as described earlier under the heading "Space and Cost Norms" if applicable.

STAGE 5: Contract administration and inspection (applicable to all projects)

Call for tenders and/or negotiate the building contract where required.

Advise the client regarding the award of the building contract – (and sub-contract(s)) and the completion of contract documents.

Administer the building contract and inspect the works.

Scrutinise the Contractor's and subcontractor's shop drawings.

Provide the client with "as built"-drawings and the relevant technical data from suppliers when the building is completed.

Notwithstanding the services described in Board Notice 161 of 2001, it will also be expected of you to perform the duties as described in the "Manual for Private Architects" (PW 147). Your duties shall specifically include the administration of the building contract and inspection of the Works during construction in such a way and at such times as will ensure that the Works are being executed in accordance with the building contract documents. Your duties will also include the certification of the acceptance of materials and workmanship for the issue of certificates in favour of the Contractor by the Quantity Surveyor, the issue of Architects instructions/site instructions/variation orders as may be necessary and generally to safeguard the Department's interests under the building contract.

Note that the compilation of site meeting minutes is not regarded a supplementary service and no additional remuneration will accrue to you.

You will be expected to attend the site handover meeting on a date of which you will be informed.

3. STANDARD DEPARTMENTAL DOCUMENTS

Please refer to the following enclosed standard departmental documents which you are expected to comply with:

"Manual for Private Architects" (PW 147)

"Specification of Materials and Methods to be used" (PW 371)

"Appropriate Development of Infrastructure on Dolomite: Guideline for Consultants" (PW 344)

"Hardware Sample List" (PW 377)

"Guide for Architects Concerning Drainage, Water Supply and Storm Water Drainage"

"Drainage Details"

Guideline for Architects concerning fees for an extended Contract Period.

WCS

The following attached documents are related to the specific project and contain particulars relevant to your appointment or must be completed:

- the Certified Procurement Instruction and the Site Clearance certificate;
- the Certified Accommodation Requirements
- the approved Environmental Impact Assessment (EIA) if available/applicable;
- the form to be completed for Police Stations and other Security Services (Z204);
- six copies of the Monthly Progress Report (PRM014/2).

You will be advised on the purpose of and sequential application of standard pro formas (PRM-forms) that you must comply with in the execution of the project. The onus is on you to obtain and utilise the correct pro formas, as amended from time to time, and obtainable from the Departmental Project Manager.

4. IMMEDIATE ACTION REQUIRED PRIOR TO PREPARATION OF
• **REPAIRS AND RENOVATIONS REPORT**
• **CONCEPT DESIGN AND SKETCH PLANS**

Upon acceptance of the appointment the following steps must be taken immediately: -

- 4.1 Arrange with the Departmental Project Manager to visit the site in order to make yourself conversant with local conditions. If not provided with a completed "Report on Property" (PRM011) form, you are required to discuss it with the Departmental Project Manager and, if found to be necessary, to complete the form in accordance with paragraph A.13.2 of the "Manual for Private Architects" (PW 147).
- 4.2 Discuss the project with the executive officer of the local authority concerned in order to ascertain the statutory town planning and building regulations, particularly with regard to building lines, height restrictions, coverage and floor space ratios, and also their aesthetic and environmental recommendations. It is the Department's policy to comply as far as possible with these regulations and recommendations and you are therefore required to do so unless it is immediately evident that the terms of your brief are in conflict with such restrictions. In such a case, or if in developing the project it should be found later that you consider it unavoidable to depart from the local authority's statutory requirements, you must:
 - 4.2.1 negotiate with their executive officer to obtain such modifications as you consider your brief to require and obtain formal confirmation of such modifications as may be mutually agreed;
 - 4.2.2 incorporate the local authority's aesthetic and environmental recommendations in your design and obtain the executive officer's final comments and/or agreement thereof.
- 4.3 Due cognisance must be taken of all Acts governing the Department and yourselves prior to (and where applicable during and after) the preparation of documentation. A general list of Acts (examples only, not comprehensive) is given in sub-section 4 of Section A of this letter of invitation.
- 4.4 If you are unable to negotiate the required modification, that you find essential in terms of your brief, with the local authority, you must refer the matter to the Department for further consideration and negotiation.
- 4.5 After taking the actions as set out above, report in writing to the Departmental Project Manager.

SECTION X2

WCS

PROFESSIONAL FEES IN RESPECT OF ARCHITECTURAL APPOINTMENT

The "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Department's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" or from the Departmental Project Manager.

1. PROFESSIONAL FEES: EXTENT OF ARCHITECTURAL SERVICES

Unless otherwise agreed, you will be remunerated for services rendered for the full duration of the project in accordance with the tariff of fees as prescribed and ruling at the date of this appointment in terms of Section 34 (2) of the Architectural Profession Act, 2000 (Act No. 44 of 2000) on condition that such tariff of fees was approved and accepted by the Department. The tariff of fees at present approved and accepted by the Department is mentioned in sub-section 3 below.

Remuneration under this appointment will be on a (type either "percentage basis" or "time basis" but not both). (In the event of a time basis appointment you are required to keep time sheets of work on the project in order to substantiate accounts should you be required to do so at any time.)

2. BUILDING CLASSIFICATION FOR APPLICATION OF PERCENTAGE FEES

Certain items, which are external to the building(s) and/or which are regarded as items of equipment, irrespective whether these are external or internal to the building(s), are not regarded as an "integral part of the project or design of the Works" and consequently the cost of these items are to be excluded from the value of the Works on which a percentage fee is calculated.

The Architect may, however, be remunerated on a *quantum meruit* basis for his involvement in the provision of these items. This remuneration must be agreed to in writing by the Department via the Departmental Project Manager before this work is undertaken.

2.1 The following are examples of items regarded as "not being an integral part of the project or design of the Works". The examples, provided hereafter, are not meant to be exhaustive - should any uncertainty exist in this regard, the onus is on the Architect to seek a ruling in writing from the Departmental Project Manager during Stage 1A or 2:

2.1.1 roads, bridges, pathways, fencing and parking areas as designed by Civil Engineer (the Civil Engineer will be involved in the detail design but you will nevertheless have an input in terms of position, shape, route, landscaping considerations, etc., meant to compliment the design of the building(s));

2.1.2 layouts of sports fields and gardens;

2.1.3 municipal connection fees;

2.1.4 main water supply, major water reticulation, reservoirs and purification plants external to the building(s);

2.1.5 main electrical supply cables external to the building(s);

2.1.6 electrical transformers, high-tension gear, generating plants and uninterrupted power supply plants, irrespective whether these are external or internal to the building(s);

2.1.7 main collector and outfall sewers and sewage disposal plants external to the building(s);

2.1.8 steam and water boilers specified by the Engineer;

2.1.9 pump and pumping equipment specified by the Engineer;

2.1.10 fire-fighting equipment specified by the Engineer;

2.1.11 projectors, audio-visual equipment, television and computer equipment and electronic equipment;

2.1.12 telephone and exchange equipment, intercommunication and loudspeaker equipment;

2.1.13 X-ray, medical, laundry, sterilising and incinerator equipment;

2.1.14 artworks;

2.1.15 landscaping, when designed by the Landscape Architect. This item to include items, features, furniture, etc., designed and specified by the Landscape Architect.

2.1.16 sinking of boreholes including any pumping equipment, when specified by the Engineer, or persons other than the Architect.

2.2 The following are examples of items regarded as "being an integral part of the project or design of the Works" on which full fees may be calculated, to elucidate paragraph 2. The examples, provided hereafter, are not meant to be exhaustive - should any uncertainty exist in this regard, the onus is on the Architect to seek a ruling in writing from the Departmental Project Manager during Stage 1A or 2:

2.2.1 electrical, water, sewage, steam, gas and communication reticulation systems internal to the building(s), except where entirely designed and specified by the Engineer, in which case the fee structure must be negotiated during Stage 1A or 2;

2.2.2 air-conditioning and ventilation systems;

2.2.3 lifts and escalators;

2.2.4 fire detection, security systems and sprinkler systems;

2.2.5 hot water generating equipment e.g. geysers, calorifiers and solar heaters;

2.2.6 built-in refrigeration facilities and mortuary cabinets.

3. TARIFF OF FEES

The tariff of fees payable and at present approved and accepted by the Department, will be the Project Cost Based Fee calculated in accordance with Board Notice 161 of 2001 published in Government Gazette No. 22904 of 14 December 2001 (and amendments thereto as published in Board Notice 13 of 2002 and Board Notice 30 of 2002), as amended by Board Notice 112 of 2004 published in Government Gazette No. 26981 of 19 November 2004, as amended by Board Notice 107 of 2005 published in Government Gazette No.

28169 of 4 November 2005, as amended by Board Notice 130 of 2006 published in Government Gazette No. 29412 of 1 December 2006 and as amended by Board Notice 3 of 2009 published in Government Gazette No. 31774 of 16 January 2009, subject to the following:

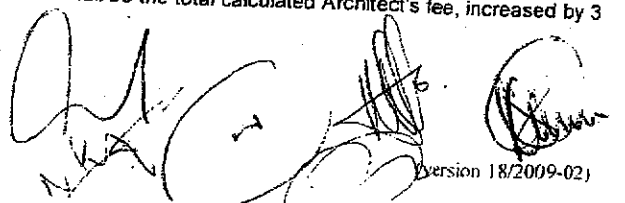
(Note that should any requirements of the Board Notice in the Government Gazette conflict with the requirements of this letter of invitation then the requirements of this letter of invitation shall prevail.)

- 3.1. The cost of the works:
 - 3.1.1 The "cost of the works" or the "project cost" in respect of this letter of invitation shall mean the total cost of all the buildings in the project/complex included in the Architect's commission less items not regarded as an integral part of the project, or design of the works - refer to paragraph 2 above for exclusions.
 - 3.1.2 The following provisions shall apply to Escalation (Contract Price Adjustment Provisions or other), where the same is regarded as part of the "cost of the works" or "project cost":
 - 3.1.2.1 Where all the professional services defined up to stage 4 have been completed prior to the commencement of the Works, the Architect shall be paid a fee equal to 75% of his standard fee, calculated, according to the circumstances applicable, on the amount of the accepted tender, excluding any contingency sum or provisional amounts which may have been allowed in the tender for escalation, or if the building contract is awarded by negotiation, the negotiated price, or if no tender is accepted, the estimated cost of the project at current market prices, as determined by a Quantity Surveyor, and accepted by the Department, or in the event of no Quantity Surveyor having been appointed, the estimated cost as determined by the Architect: provided that the fee so calculated shall not be subject to subsequent adjustment as a consequence of inflation or deflation, but additional work or changes in the original documentation after commencement of construction shall be charged for at the relevant percentage fee based on costs prevailing at the time when the work is done or changes are made or on a time basis, whichever is relevant to the circumstances.
 - 3.1.2.2 Where all the professional services defined up to stage 4 have been completed prior to the commencement of the works, the Architect shall, on completion of the works, be paid a fee equal to 75% of his standard fee calculated upon the final cost of the works less the value of escalation since commencement of construction as certified by the Quantity Surveyor, plus 25% of his standard fee, calculated upon the final value of the Works and any fees due for additional work in terms of paragraph 3.1.2.1 above.
 - 3.1.2.3 In the event of all professional services defined up to stage 4 not having been completed prior to the commencement of the Works, a percentage completion status shall be agreed between the Department and the Architect and fees on the balance of the professional services shall be based on the final cost of the works (including escalation).
 - 3.2 Where fees are determined from an estimate, the estimate shall be that estimate approved and accepted by the Department which is, in all cases where interim payments are considered, 80% of the estimate prepared by the Quantity Surveyor (subject to the provisions of item 3.1. above). If tenders were received, but not awarded, the amount of the lowest tender will form the basis for the calculation of fees unless it can be proven that such tender amount is unreasonable.
- 3.3 Clause 1.1 is amended to read "... assigned to them in Clause 1.2, or as amended in the letter of invitation".
- 3.4 Clause 1.2, the definition for "alteration" is amended: exclude the words "which are dealt with under supplementary services" from the definition for "alteration".
- 3.5 Clause 1.2, "building contract" shall refer to any contract prescribed by the National Department of Public Works.
- 3.6 Clause 1.2, "client" shall refer to the National Department of Public Works.
- 3.7 Clause 1.2, "inspection", is amended: delete the word "generally" from the words "... that the work is proceeding generally according to the requirements of the building contract ...".
- 3.8 Clause 2.1 is amended: the basis for remuneration of a firm shall be as set out in 2.1.1, 2.1.2 and 2.1.3 subject to the amendments made by the National Department of Public Works to Clause 10.1 and 10.2, and subject to any other alternative requirement of this letter of invitation.
- 3.9 Clause 2.2 is replaced by sub-section 9 of Section A of this letter of invitation.
- 3.10 Clause 2.3 is replaced by sub-section 2 of Section X2 of this letter of invitation.
- 3.11 Clause 3 is replaced by sub-section 2 of Section X1 of this letter of invitation.
- 3.12 Clause 4 is amended; the following services are included in the Standard Services for this project and will not be subject to additional fees:
 - (a) normal site survey including taking of levels;
 - (b) discussions and negotiations with the executive officer of the local authority, including the ascertainment of statutory or town planning and building clauses, or any statutory authority, including the submission of a full set of drawings to the same for "information" or "comment" in terms section 2(3) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), subject to the provisions of section 2(4) of the said Act;
 - (c) quality control and quality assurance;
 - (d) services as Principal Agent throughout this appointment with special reference to the co-ordination and control of progress, quality and financial matters;

- (e) energy conservation through the design of buildings with good thermal characteristics and sufficient natural light and ventilation;
- (f) graphical work associated with any signage for the project i.e. name, number and notice boards as well as safety signs according to the requirements of the National Building Regulations and NOSA;
- (g) purpose made items of architectural nature that will form part of the building contract;
- (h) inspections and surveys of existing buildings (which shall be deemed remunerated for under the 25% additional fee). Site survey will thus form part of the standard services provided by the Architect, except in the event of the receipt of a properly motivated submission (prior to commencing with the work), in cases of extensive/ intricate survey, requesting that site survey not form part of the standard services or remuneration. Site survey will only be a supplementary service specifically where this item has been referred to the Departmental Project Manager and a written confirmation has been received by the Architect from the Departmental Project Manager indicating that it is a supplementary service, which must occur before any work is undertaken in that regard;
- (i) repairs, renovations, adaptation, alterations, upgrading and refurbishment. The 25% additional fee – only when regarded as applicable by the Department for work to existing – shall remunerate consultants for any additional services which are as a result of repairs, renovations, adaptation, alterations, upgrading and refurbishment;
- (j) restorations (buildings of heritage value only). The 40% additional fees – when regarded as applicable by the Department for work to existing structures – shall remunerate consultants for any additional service which are as a result of restorations;
- (k) before undertaking any work with regard to demolitions, the Architect must seek clarity in writing from the Department as to the method of remuneration therefor. Failure to seek clarity in this regard, or obtaining a written decision from the Departmental Project Manager concerned, will lead to a unilateral decision made by the Department regarding remuneration therefor and
- (l) any minor work which the Architect may undertake in the event of the insolvency or liquidation of a contractor – which may be necessary to protect the Department's interests in terms of the building contract – shall be deemed part of the standard services, and part of the normal remuneration. Any major work contemplated by the Architect in terms of the insolvency or liquidation of a Contractor, must be referred to the Departmental Project Manager for a decision in writing as to the specific appointment of the Architect in this regard, and in regard to the remuneration therefor, before any work is contemplated in this regard. The Architect will nevertheless be expected to be pro-active in protecting the Department's interests with regard to this item.

- 3.13 Clause 4.1.10 is excluded: where the services of the Architect are utilised in terms of landscaping (note that this is specifically where a landscape Architect is not appointed for this purpose, and the Architect specifically is), and this becomes part of the Value of the Works, it shall be regarded as a standard service, with standard remuneration.
- 3.14 Clause 4.1.13 is replaced by item 3.12 (g) above.
- 3.15 Clause 4.2.1 is replaced by item 3.12 (h) above.
- 3.16 Clause 4.2.2 is excluded; refer to **Section X1** of this letter of invitation, "Definitions of Standard Services".
- 3.17 Clause 4.2.3 is replaced by item 3.12 (i) above.
- 3.18 Clause 4.2.4 is replaced by item 3.12 (j) above.
- 3.19 Clause 4.2.6 is replaced by item 3.12 (k) above.
- 3.20 Clause 4.3.3: the Department will, at its sole discretion, decide what constitutes extended and/or detailed inspection of the works.
- 3.21 Clause 4.3.5 is replaced by item 3.12 (c) above.
- 3.22 Clause 4.3.6 is replaced by item 3.12 (l) above.
- 3.23 Clause 4.3.7 is amended: this Clause shall only be applicable where the Architect is specifically appointed in writing in regard to services concerning disputes or litigation.
- 3.24 Clause 4.3.8: the Department, at its sole discretion, will decide what constitutes additional services.
- 3.25 Clause 4.5.1 is excluded; the provision of maintenance and operating manuals/instructions shall be regarded as a standard service to be provided.
- 3.26 Clause 4.5.2 is excluded.
- 3.27 Clause 5.1.1 is amended: the last part of Clause 5.1.1 shall read "... calculated according to Clause 10.1, as amended".
- 3.28 Clause 5.2.1 is amended to read: "Where the firm is appointed to render a partial service only, the fee, subject to Clause 5.2.2 shall be calculated according to Clause 10.1, as amended, adjusted for the work stages executed in accordance with the letter of invitation, unless otherwise agreed in writing before any work is undertaken in this regard."
- 3.29 Clause 5.3.1 is amended to read: "... according to Clause 10.1, as amended".
- 3.30 Clause 5.3.1.4 is amended to read: "Ft = Fee determined in terms of 10.1, as amended, for the total cost of the works, less any items not regarded as an integral part of the project or design of the works, as listed under sub-section 2 of Section X2 of this letter of invitation", and adjusted as indicated in item 3.1 above.

- 3.31 Clause 5.3.1.4 is amended to read: "Vr = Value of repeated units in terms of 5.3.1.3, excluding the first unit, *of each group of repetitions*."
- 3.32 Clause 5.3.2.1 is excluded. Remuneration for re-use and revision of previously prepared documentation for repetitions shall be on a time basis. The hourly basis amount shall not exceed 15% of the total Architect's fee in respect of prototypes and repeats of designs.
- 3.33 Clause 5.3.2.2 is excluded; refer to sub-section 17 COPYRIGHT of Section A of this letter of invitation. Copyright of all documents prepared by the Architect is, in terms of the letter of invitation, vested in the Department, any stipulation in the Board Notice that is to the contrary is therefore excluded from this appointment.
- 3.34 Clause 5.3.2.3 is amended to read: "... according to Clause 10.1, *as amended*".
- 3.35 Clause 5.5 is excluded. The fee adjustment for an extended building contract shall occur only under the prescriptions as described in sub-section 5 of Section X2 (hereunder) and the prescriptions and method of calculation as described in the *Guideline for Architects for the calculation of fees for an extended contract period*.
- 3.36 Clause 5.6.1 is excluded. The fee for any supplementary services shall only be considered where the Architect is specifically appointed in writing for the said supplementary service, and shall be remunerated on a time base according to sub-section 4 of Section X2 of this letter of invitation, or on any other basis, either/any of which must be agreed to in writing and confirmed by the Department, before any work is undertaken in this regard.
- 3.37 Clause 5.6.2 is excluded. Refer to the table in sub-section 6 of this Section X2 of this letter of invitation which describes when an additional fee is payable and at what percentage this additional fee will be payable.
- 3.38 Repairs and Renovations, Rehabilitation, Adaptation, Alterations, Upgrading and Refurbishment to existing buildings: the 25% increase in fees and Restoration to existing buildings: the 40% increase in fees, referred to in sub-section 6 of Section X2 of this letter of invitation, shall be deemed to remunerate the Architect for all surveys and measuring of existing buildings and no additional fees shall be paid for this service without prior written agreement.
- 3.39 Clause 5.6.4 is excluded; the remuneration for site staff shall be calculated according to the approved departmental method. Note that site staff must be applied for and approved by the Department in writing, before being utilised. If site staff is required over and above normal inspection, such site staff must be applied for.
- 3.40 Clause 5.6.5 is amended to read: "... shall be negotiated between the parties *and any agreement committed to writing, before any work is undertaken in this regard*. The Department, at its sole discretion, will decide what constitutes extraordinary contract provisions including Multiprocurement."
- 3.41 Clause 5.6.6 is excluded; interest on outstanding accounts shall be calculated as referred to in Section A of this letter of invitation.
- 3.42 For fulfilling the duties and responsibilities as the Department's agent, appointed in terms of Section 4 (5) of the Construction Regulations, 2003 (published in Government Gazette No. 25207 of 18 July 2003) as promulgated under the Occupational Health and Safety Act, 1993 (Act 85 of 1993), you will be remunerated a fee equal to 6% of your total fees for the project (excluding disbursements).
- 3.43 Clause 5.7 is excluded; fees on deferment and/or termination of employment shall be remunerated as per the main text of this letter of invitation.
- 3.44 Clause 6 is excluded; termination of engagement shall be handled as per the main text of this letter of invitation.
- 3.45 Clause 7 is excluded; in the event of damage to or destruction of the Works, refer to the main text of this letter of invitation.
- 3.46 Clause 8.1 is excluded; time basis fees shall be as per sub-section 4 of this Section X2 of this letter of invitation.
- 3.47 Clause 8.2 is excluded.
- 3.48 Clause 8.3 is excluded; the remuneration shall be as stipulated in sub-section 4 (i) of this Section X2, where the Architect/Principal Agent is specifically appointed in writing as arbitrator, mediator or expert witness.
- 3.49 Clause 9 is excluded; the reimbursement for and nature of disbursements to be reimbursed for shall be as set out in Sections B and C of this letter of invitation.
- 3.50 Clause 10.1.1 is amended: replace the words "project costs" with the words "*cost of the works less items not regarded as an integral part of the project or design of the works as listed under sub-section 2 of Section X2 of the letter of invitation, including the adjustments as per item 3.1 of Section X2 of the letter of invitation*".
- 3.51 Clause 10.2 is excluded; time basis fees shall be as per sub-section 4 of this Section X2 of this letter of invitation.
- 3.52 When the Architect is specifically appointed for implementing and monitoring the Affirmative Procurement Policy (APP)/targeted procurement in respect of this project, he shall implement and monitor and report back on the performance of the Contractor in terms of the provisions of the building contract in this respect. The fee shall be the total calculated Architect's fee, increased by 3 per cent.



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4. TIME BASIS FEES

The scale of fees on a time basis, on which Value Added Tax is excluded, shall be at the following rates per hour, rounded off to the nearest rand: (see Table 8 of "Rates for Reimbursable Expenses" for the actual amounts calculated in accordance with the principles laid down below):

- (i) principals: 18,75 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 13 salary range (Director) in the Public Service;
- (ii) registered professional personnel: 17,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 12 salary range (Deputy Director second leg) in the Public Service;
- (iii) salaried professional and technical personnel: 16,5 cents for each R100,00 of his/her gross annual remuneration; provided that this hourly rate shall not exceed 16,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 11 salary range (Deputy Director first leg) in the Public Service.

Hourly rates calculated in terms of (i), (ii) and (iii) above shall be deemed to include overheads and charges in respect of time expended by clerical personnel which shall, therefore, not be chargeable separately.

Unless otherwise specifically agreed in writing, remuneration for the time expended by principals in terms of (i) above on a project shall be limited to 5 per cent of the total time expended for time basis fees on the project. Any time expended by principals in excess of the 5 per cent limit shall be remunerated at the rates determined in (ii) or (iii) above.

Notwithstanding the above, where work is of such a nature that personnel as described in paragraph (iii) above are capable of performing such work, it shall be remunerated at that level and not at the rates described in paragraphs (i) and (ii) above, irrespective of who in fact executed the work.

Gross annual remuneration in (iii) above shall mean basic salary and guaranteed annual bonus; fringe benefits not included in basic salary; income benefit, as determined from time to time by the South African Revenue Services for income tax purposes, for the private use of a motor vehicle by the employer; employer's contribution to pension/provident fund, medical aid and group life assurance premiums; Compensation Fund and Unemployment Fund contributions, Metropolitan Council levies and any other statutory contributions or levies; all other costs and benefits as per conditions of appointment but excluding any share of profit and payment for overtime.

The salaries referred to in (i) to (iii) above can change from time to time, which will, therefore, change the rates applicable. These rates will, however, only be adjusted on the first day of each calendar year irrespective of any changes in salary ranges during the relevant year. You may claim the rate as set out in Table 8 of the "Rates for Reimbursable Expenses", as amended from time to time.

5. FEE ADJUSTMENT FOR AN EXTENDED INITIAL CONTRACTUAL CONSTRUCTION PERIOD

- 5.1 Additional fees in respect of professional services, rendered by the Architect beyond the contractual First Delivery date, will only be considered if the Architect can prove that the necessary pre-emptive actions have been taken timeously in terms of the Architect's appointment and the Conditions of Contract, entered into between the Department and the Contractor, to prevent or minimise the occurrence of any delayed completion beyond the said contractual First Delivery date.
- 5.2 Should the **actual time on the construction site**, less any extension of the Contract Period approved for additional work, and less any portion of the **actual time on the construction site caused by professional default** on the part of the Architect, and less any portion of the **actual time on the construction site where no professional duties are required** from the Architect, exceed the **initial contractual construction period** by more than ten percent (10%), then additional fees may be charged. Such additional fees shall be calculated by multiplying eighty percent (80%) of the fee for stage 5 by the said excess and dividing same with the **initial contractual construction period**.
- 5.3 The **initial contractual construction period** and the **actual time on the construction site** shall be regarded as commencing on the date of Site Handover and ending on the date on which the First Delivery Certificate is issued to the Contractor. All time periods shall be calculated in calendar days without deduction of builders' holidays.
- 5.4 Where additional fees have been claimed in accordance with the provisions in 5.1 to 5.3 *supra*, time basis fees in addition thereto shall not be considered.
- 5.5 Notwithstanding any possible different meaning of similar words in the Contract between the Department and the Contractor or any other section of this letter, the following words or series of words in paragraphs 5.1 to 5.3 *supra* will mean:
 - 5.5.1 "**initial contractual construction period**" will mean the period from the date of handing over of the site to the contractual date of First Delivery;
 - 5.5.2 "**actual time on the construction site**" will mean the period from the date of handing over of the site to the Contractor to the actual date of First Delivery;
 - 5.5.3 "**actual time on the construction site caused by professional default**" will mean that period of the actual time on the construction site for which the Architect can be held accountable by virtue of his neglect for not timeously having taken the necessary pre-emptive actions, in terms of the Architect's appointment and the Conditions of Contract, entered into between the Department and the Contractor, to prevent or minimise the occurrence of any delayed completion beyond the contractual First Delivery date;
 - 5.5.4 "**any portion of the actual time on the construction site where no professional duties are required**" will mean that period of time during which, for various reasons dictated by specific circumstances, no work is being executed by the, or any, Contractor and during which the Architect does not have to render the regular and/or significant professional services, required under normal circumstances.
(The period of no activity on site as a result of the liquidation of the Contractor's estate, will be regarded as one of the "various reasons" referred to above. Additional time basis fees will however be recognised in respect of work performed by the Architect if

such work is directly associated with, and required for, soliciting the services of another Contractor or Contractors, necessary for completing the Works.)

6. CATEGORIES OF PROJECT TYPES AND THE CORRESPONDING FEE CALCULATION METHOD APPLICABLE FOR ARCHITECTS

	Project type and definition	Stage	Project cost based fees (base + percentage)	Additional fee	Time basis fees
1	Construction (new projects) Building, assemble, establish fabrication of new buildings, structures, installations.	1 2 3 4 5	5% 15% 15% 40% 25% 100%	N/A N/A N/A N/A N/A	N/A N/A N/A N/A N/A
2	Addition Build-on, additional, enlarge/extend existing accommodation, add on (increase).	1 2 3 4 5	5% 15% 15% 40% 25% 100%	N/A N/A N/A N/A N/A	N/A N/A N/A N/A N/A
3	Repairs and Renovations Observable and recognizable damage, deterioration, broken (doors, locks, hinges, taps, etc.), worn, torn, disrepair.	1a 3a 4 5	5% 15% 40% 25% 85%	+25% +25% +25% +25%	N/A N/A N/A N/A
4	Rehabilitation Repair, reconstruct, renew, rehabilitate – existing structures, buildings.	1a 3a 4 5	5% 15% 40% 25% 85%	+25% +25% +25% +25%	N/A N/A N/A N/A
5	Restoration (heritage) Repair, reconstruct, renew, rehabilitate – heritage buildings (historical) structures, objects (specialist knowledge of materials and methods).	1a 3a 4 5	5% 15% 40% 25% 85%	+40% +40% +40% +40%	N/A N/A N/A N/A
6	Adaptation Change of function, use, application.	1 2 3 4 5	5% 15% 15% 40% 25% 100%	+25% +25% +25% +25% +25%	N/A N/A N/A N/A N/A
7	Alterations Change, modify, adjust facility (same use).	1 2 3 4 5	5% 15% 15% 40% 25% 100%	+25% +25% +25% +25% +25%	N/A N/A N/A N/A N/A
8	Upgrading To improve, better quality, higher requirements (colour schemes, materials, etc).	1 2 3 4 5	5% 15% 15% 40% 25% 100%	+25% +25% +25% +25% +25%	N/A N/A N/A N/A N/A
9	Refurbishment Renew, revamp, redecorate, refit, recondition not because of any deterioration or damage (prestigious).	1 2 3 4 5	5% 15% 15% 40% 25% 100%	+25% +25% +25% +25% +25%	N/A N/A N/A N/A N/A
10	Installation Fitting, placing, positioning, equipping (plant, machinery, appliances, etc).	N/A	N/A	N/A	N/A
11	Sinking Drill a hole and equip to withdraw subsurface water.	N/A	N/A	N/A	N/A
12	Suppliers Connection Linking up with a main supplier e.g. electricity, water, sewerage, etc. (suppliers payment), service provider.	N/A	N/A	N/A	N/A
Note: 1	See paragraph 3 TARIFF OF FEES, of this Section X2 of this letter of invitation as regards Escalation (CPAP), etc. Hourly rates will apply when decided/instructed/requested by the Department.				
2					

Date: 27 August 2009

Our Ref. PBN/09/09/A3

"B"

The Project Manager
Department of Public Works - Durban Regional Office
P.O. Bag x54315
DURBAN
4001

(By Fax: 031 337 9020)

Dear Mr Sam Mahadeo

RE: DURBAN PROJECT A: INSTALLATION OF SECURITY AND RELATED SERVICES:

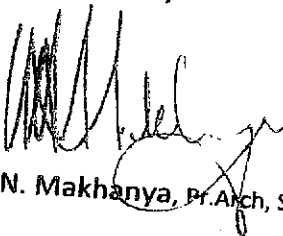
WCS047455 – ACCEPTANCE OF APPOINTMENT

We thank you for the appointment and hereby express our appointment for architectural services in respect of the above project.

The tax clearance certificate and our professional indemnity insurance is in order.

I hope you find the above in order.

Yours faithfully



M.N. Makhanya, Pr.Arch, SAIA

For Minenhle Makhanya Architects

Table 2: Claims

No	Claim	Area of Construction	Recovery (inclusive of VAT and professional fees)	Motivation for recovery
Claim B				
1	B.1	Tunnels with an exit and three lifts	R21 180 245.00	Varied scope of works – not a security requirement
2	B.2	SAPS and SANDF residential staff houses and laundry facility	R11 963 924.00	Varied scope of works – not a security requirement
3	B.3	Visitors lounge	R3 927 954.00	Varied scope of works – not a security requirement
4	B.4	Basement Parking	R4 971 995.00	Varied scope of works – not a security requirement
5	B.5	VIP parking and fire pool	R3 964 239.00	Varied scope of works – not a security requirement
6	B.6	Relocation of households	R10 622 616.00	Varied scope of works – not a security requirement
7	B.7	Roads	R4 454 454.00	Varied scope of works – not a security requirement
8	B.8	Air conditioning in Private Residences	R4 049 129.00	Varied scope of works – not a security requirement
9	B.9	Landscaping to high security area	R3 371 550.00	Varied scope of works – not a security requirement
Total			R68 506 106.00	
Claim C				
10	C.1	SAPS Guard houses	R498 520.72	Over design on scope of works
11	C.2	Control room	R2 505 764.08	Over design on scope of works
12	C.3	Clinic	R787 909.31	Over design on scope of works
13	C.4	Sewer works	R1 624 894.23	Over design on scope of works
14	C.5	SAPS and SANDF residential staff houses and laundry facility	R2 353 854.37	Over design on scope of works
15	C.6	Crew Pavilion	R448 584.80	Excessive Payments above market related cost
16	C.7	SAPS Guard houses	R663 063.43	Excessive Payments above market related cost
17	C.8	Clinic	R2 307 219.09	Excessive Payments above market related cost
18	C.9	Concrete Pillars - inner perimeter fence	R515 433.75	Excessive Payments above market related cost
Total claim C			R11 705 243.78	
Claim D				
19	D.1	Makhanya	R5 624 541.91	Overpayment of Fees
20	D.2	R&G	R6 297 925.58	Overpayment of Fees

21	D.3	Ibhongo	R255 681.51	Overpayment of Fees
22	D.4	M&C	R1 407 418.73	Overpayment of Fees
23	D.5	Igoda	R88 943.78	Overpayment of Fees
Total Claim D			R13 674 511.50	
Claim E				
24	E.1	Civil works	R54 825 513.00	No detail on what the spend is for is noted
25	E.2	Electrical work	R5 347 999.00	No detail on what the spend is for is noted
Total claim E			R60 173 512.00	
Claim F				
26	F.1	Outer high security fencing	R1 182 999.99	Excessive Payments above market related cost
27	F.2	Inner high security fencing	R82 143.22	Excessive Payments in respect of standing time
Total claim F			R1 265 143.21	
Total Claim			R155 324 516.49	