



CONTRACT

FOR

TURNKEY CONSTRUCTION AND IMPLEMENTATION SERVICES

PROJECT NAME: ELECTRICAL ENGINEERING TURNKEY CONSTRUCTION INEP PROJECT
IN WARD 11 FOR COMPLETION OF 154 HOUSEHOLDS- 2025/2026

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[Signature]

Contract relating to Construction and implementation services

Made and entered into between

UMDONI MUNICIPALITY

Herein represented by **Mr. W. Gumede** in his capacity as Acting Municipal Manager of the UMDONI MUNICIPALITY, (She being duly authorized hereto)

("Client")

Of the one part

AND

BI INFRASTRUCTURE CONSULTANTS (PTY) LTD

Registration Number 2013/082305/07

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

("Turnkey Contractor or Implementing Agent/ Engineering")

Of the other part.

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GENERAL CONDITIONS OF CONTRACT

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1. DEFINITIONS

In the Contract, except where the context otherwise requires-

- 1.1 "Business Day" means any day other than a Saturday, Sunday or Public Holiday.
- 1.2 'Conditions of Contract' means these General Conditions of Contract for Services;
- 1.3 Construction Services' means the services specified in Schedule 1 of this Contract and/or as shall be determined by the Client from time to time;
- 1.4 Turnkey Contractor' means the person(s), whether natural or juristic, appointed in writing by the Client to perform the Construction Services and includes their officers, and employees;
- 1.5 Contract means the Agreement between the Client and the Turnkey Contractor as constituted by:
 - i) the General Conditions of Contract
 - ii) the Schedules to this Contract
 - ii) the tender document where appropriate
 - iv) the letter of acceptance

and where there arises an inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity will be in the order set down above;
- 1.6 'Contract Material' means all material, including but not limited to records, created in connection with or for the purposes of performing the Construction Services; as well as all discoveries, inventions and documents made or developed in the course and scope of this contract.
- 1.7. Intellectual property rights' means any patent, registered design, trade mark or name, copyright or other protected right;
- 1.8 Invitation' means the invitation extended to the Contractor by the Client to submit an offer for the performance of Construction Services;
- 1.9 'Legislative requirements' includes:
 - (a) acts, ordinances, regulations, by-laws, order, awards, proclamations or any other enactment having the force of law in the Republic of South Africa and UMDONI MUNICIPALITY that are applicable to the Construction Services; and
 - (b) certificates, licenses, consent, permits, approvals and requirements of organizations having jurisdiction applicable to the Construction Services;
- 1.10. "Parties" means the Client and the Contractor \ Implementing Agent;

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

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

2. INTERPRETATION

- 2.1 In this agreement, words importing-
- 2.1.1. The singular, include the plural and vice versa;
- 2.1.2. Any one gender, include the other genders.
- 2.2 Any reference in this agreement to an enactment (or any regulations promulgated pursuant thereto) is to that enactment (or those regulations) as at the date of signature hereof.
- 2.3 Any reference in this document to "this agreement" or any other agreement or document, shall be construed as a reference to this Agreement or, as the case may be, any other agreement or document, as may be, or may from time to time, be amended, varied, contradicted, novated or supplemented by agreement of the parties or, if permitted by this Agreement by one of them.
- 2.4 Any reference in this document to "this Agreement" or " this Contract" refers to these General Conditions of Contract as well as any signed Schedules or other Annexures that are attached to it.
- 2.5 Any reference to the "Client" in this Agreement shall refer to the Municipal Manager of the UMDONI MUNICIPALITY or the Project Manager appointed in terms of Clause 6 of this Agreement;

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

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3. RESPONSIBILITIES AND OBLICATIONS OF THE CONTRACTOR

3.1. Performance

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

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

3.2. Commencement Date

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

3.3. Completion

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

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3.4. Undertakings and Warranties

The Contractor warrants and undertakes to the Client that:

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

3.5. Standard of Conduct of Contractor

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

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3.6. Independent Contract

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

3.7. Personnel

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

3.8. Progress and Program

The Contractor must;

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

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

3.9. Subcontracting and Assignment

- 3.9.1. The Contractor may not subcontract the whole or any part of the Construction Services without the Client's written consent.
- 3.9.2. The Contractor must not assign the Contract or any of the benefits or obligations under the Contract without the Client's written consent.

4. RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

4.1. Performance

The Client with:

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

5. PAYMENT OF FEES AND DISBURSEMENTS

5.1. Payments

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

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

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

6. PROJECT MANAGER

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

7. INTELLECTUAL PROPERTY

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

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

8. RECORDS AND CONTRACT MATERIAL

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

9. CONFLICT OF INTEREST

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

10. CONFIDENTIAL INFORMATION

The Contractor must;

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

11. NON SOLICITATION

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

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

12. DIRECTION AND VARIATION

12.1. Direction by Client

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

12.2. Variations

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

- 12.2.1. The Client may, by written notice to the Contractor, direct the Contractor to vary the nature, scope or timing of the Construction Services (and including the omission or reduction of any part of the Construction Services) and the Contractor shall be bound to comply with that direction.
- 12.2.2. If the Client gives a notice in terms of clause 12.2.1, the fees shall continue to be calculated on the same basis as before the notice.
- 12.2.3. If the basis for the calculation of the fees is affected by a notice in terms of clause 12.2.1, then agreement will have to be reached between the Parties on the new basis for calculating the fees.
- 12.2.4. The Client shall not be liable for payment to the Contractor for any compensation for loss of profits or for any other reason.
- 12.3. Errors and Omissions in the Contract Material
- 12.3.1. The Contractor shall correct errors or omissions in the Contract Material at the Contractor's own expense.
- 12.3.2. Where, owing to circumstances beyond the reasonable control or anticipation of the Contractor, the Contractor is required to alter, add, or delete contract Material previously submitted and accepted by the Client, the Contractor shall inform the Client and seek direction.

13. SUSPENSION, DEFAULT, TERMINATION

13.1. Suspension

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

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

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

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

13.2. Termination due to Default by Contractor

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

13.2.2. A notice to rectify must:

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

- 13.2.2.2. specify the alleged breach in detail;

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

13.3. Termination on Notice

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

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

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

13.4. Termination on Default by Client

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

13.5. Effect of Termination

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

14. DISPUTE RESOLUTION

14.1. Notice of Dispute

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

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14.2. Mediation

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

14.3. Arbitration

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

15. AMENDMENTS AND WAIVER

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

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

16. GOVERNING LAW

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

17. ENTIRE AGREEMENT

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

18. NOTICES AND DOMICILIA

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

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

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

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

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

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

18.3.2 be given in writing in the English language; and

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

18.4. Any notice so given –

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

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

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

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

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

19. Signatures

SIGNED AT PIETERMARITZBURG on this ____ day of _____ 2025

SIGNATURE ON BEHALF OF BI INFRASTRUCTURE CONSULTANTS (PTY) LTD

WITNESS

WITNESS

SIGNED AT _____ on this ____ day of _____ 2025

SIGNATURE ON BEHALF OF UMDONI MUNICIPALITY

WITNESS

WITNESS

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P.N. sm I

ANNEXURE A

SCHEDULE

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

A.1 CONTRACTING PARTIES

Client

[1.1.3;1.2]

Umdoni Municipality

Postal address P.O BOX 19
SCOTTBURGH

Country SCOTTBURGH Code 4180

Tel 039 976 1202 Fax 039 976 0381

e-mail mmoffice@umdoni.gov.za

Physical address UMDONI MUNICIPALITY
CNR BRAM FISHER & WILLIAMSON
STREET, SCOTTBURGH

Country SCOTTBURGH Code 4180

Contractor

[1.1.7;1.2]

BI Infrastructure Consultants (Pty) Ltd

Postal address 42A Montgomery Drive
Athlone, Pietermaritzburg

Country South Africa Code 3201

Tel 033 345 4125 Fax 033 345 3883

e-mail fortune@biiConsultants.co.za

Physical address 42A Montgomery Drive
Athlone, Pietermaritzburg

Country South Africa Code 3201

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A.2 EFFECTIVE DATE

[4.1]

This agreement shall be effective from 27 June 2025

(Date)

A.3 CLIENT'S REPRESENTATIVE**Client's representative**

[1.1.4;5.1]

ACTING MUNICIPAL MANAGER: MR. W. GUMEDE

(name)

Postal address

P.O BOX 19SCOTTBURGHCountry SCOTTBURGHCode 4180Tel 039 976 1202Fax 039 976 0381e-mail moffice@umdoni.gov.za

Physical address

UMDONI MUNICIPALITYCNR BRAMFISCHER & WILLIAMSON
STREET, SCOTTBURGHCountry SCOTTBURGHCode 4180**A.4 PRINCIPAL CONTRACTOR****Principal Contractor**

[1.1.11]

BI Infrastructure Consultants (Pty) Ltd

(name)

Postal address

42A Montgomery Drive, AthlonePietermaritzburgCountry South AfricaCode 3201Tel 033 345 4125Fax 033 345 4125e-mail fortune@biiConsultants.co.za

Physical address

42A Montgomery Drive, AthlonePietermaritzburgCountry South AfricaCode 3201**A.5 PRINCIPAL AGENT****Principal agent**

[1.1.10]

BI Infrastructure Consultants (Pty) Ltd

(name)

Postal address

42A Montgomery Drive, AthlonePietermaritzburgCountry RSACode 3201Tel 033 345 4125Fax 033 345 3883e-mail fortune@biiConsultants.co.za

Physical address

42A Montgomery Drive, Athlone


Handwritten signature and initials: P.N. SM I

Pietermaritzburg

Country RSA

Code 3201

A.6 OTHER CONTRACTORS

[1.1.8]

Architect

N/A

(name / to be appointed / not applicable)

Civil engineer

N/A

(name / to be appointed / not applicable)

Electrical engineer

N/A

(name / to be appointed / not applicable)

Fire Contractor

N/A

(name / to be appointed / not applicable)

Health & safety Contractor

N/A

(name / to be appointed / not applicable)

Interior designer

N/A

(name / to be appointed / not applicable)

Landscape architect

N/A

WILL (name / to be appointed / not applicable)

Mechanical engineer

N/A

(name / to be appointed / not applicable)

Project manager

N/A

(name / to be appointed / not applicable)

Quantity surveyor

N/A

(name / to be appointed / not applicable)

Structural engineer

N/A

(name / to be appointed / not applicable)

Wet services Contractor

N/A

(name / to be appointed / not applicable)

Geotechnical Engineers

(Service/Contractor)

(name / to be appointed / not applicable)

Environmental Contractor

(Service/Contractor)

(name / to be appointed / not applicable)

(Service/Contractor)

(name / to be appointed / not applicable)

(Service/Contractor)

(name / to be appointed / not applicable)


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A.7 PROJECT

[1.1.12; 2.1; 2.2]

Name and description	<u>Electrical Engineering INEP Project In Ward 11 for 154 Households</u> <u>Turnkey Construction services for Concept and Viability, Design Development,</u> <u>Documentation and Procurement, Contract Administration, Construction and Close-Out</u>
Site identification	<u>The project is located in Ward 11 of Umdoni local Municipality. The project is located in</u>
Site Reference	<u>Lat :</u> _____ <u>Long :</u> _____ _____

A.8 DOCUMENTS

[1.1.1; 1.9]

This agreement

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

Signed original documents held by Umdoni local Municipality**A.9 LIMIT OF LIABILITY**

[7.2.]

Select one of the following:

The proceeds of any claim against the professional indemnity insurance

No

(Yes/No)

Specific amount (insert amount)

NA

An amount equals the fees payable by the client to the Contractor in terms of 9.1

R10 000 000.00No


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A.10 PROFESSIONAL INDEMNITY INSURANCE**[8.1]**

Party responsible for professional indemnity insurance

Leppard Underwriting*(client/Contractor)*

Limit of indemnity per claim

R 10 000 000.00

Limit of indemnity in the aggregate

R10 000 000.00

Non-claimable amount (excess/deductible)

N/A

The renewal date of the policy is

30 June 2026*(Date)***A.11 TURNKEY CONSTRUCTION COST****[9.1]**

The Turnkey Construction fees shall be

R 4 451 000.00**(FOUR MILLION, FOUR HUNDRED AND FIFTY ONE THOUSAND RANDS)**

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

R 4 451 000.00

including VAT

A.12 APPORTIONMENT OF PROFESSIONAL FEES**[9.1; 13.1]**

The professional fees shall be apportioned as follows

ECSA Tariff of Fees (2015),

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A.13 DISBURSEMENTS

A.13.1 Method of reimbursement

[11.1]

Included in professional fees

No
(Yes/No)

A fixed amount of

Proven cost

No
(Yes/No)

A.13.2 Expenses

[11.1.1; 11.1.2; 11.1.3]

Amendments to expenses listed:

NA

A.13.3 Other expenses

[11.1.4]

NA

excluding tax

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A.13.4 Payment**[11.2]**

Amendments to terms of payment:

A.14 INTERESTS OF CONTRACTOR**[16.1]**

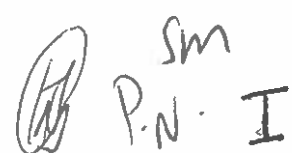
NA

A.15 EQUIPMENT AND FACILITIES TO BE PROVIDED BY CLIENT**[5.6]**

NA

A.16 APPLICABLE LAW**[1.5]**The law applicable to this agreement shall be that of South Africa

(country)

A.17 MEDIATOR NOMINATED BY**[18.2]**Name TO BE ADVISEDAddress Country Code Tel Fax e-mail **A.18 ARBITRATOR NOMINATED BY****[18.9]**Name TO BE ADVISED


Handwritten signature and initials: "SM", "P.N.", and "I".

Address

Country

Code

Tel

Fax

e-mail

A.19
[18.11]

ARBITRATION RULES

TO BE ADVISED

A.20
[1.1.13]

AMENDMENTS AND/OR SPECIAL CONDITIONS

NA



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A.21 SIGNATURES OF THE CONTRACTING PARTIES

[1.1.9]

Thus, done and signed at

SCOTTBURGH

on

21 / 01 / 2026

Signature of Representative

ACTING MUNICIPAL
MANAGER

Capacity of signatory

Thus, done and signed at

Scottburgh

As witness

Signature of Representative

DIRECTOR

Capacity of signatory

UMDONI MUNICIPALITY (KZN)

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

BI INFRASTRUCTURE CONSULTANTS

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

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SCHEDULE 1: SCOPE OF WORKS AND REMUNERATION

SCOPE PROVISIONS

The following documents form part of the agreement: -

Agreements

Specific Provisions

Conditions of agreement

Schedule 1 : Scope of works and remuneration

Schedule 2 : Letters of appointment

Schedule 3 : Environmental and Safety

1. Insurance

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

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

2. Scope of Service

2. Scope of services

- 2.1 In terms of this contract, ENGINEERING undertakes to act as project manager to deliver the following facility to the Client, UMDONI Municipality on a project by procuring all goods and services, and managing all service providers, with an express intention of achieving the Client's objectives in terms of scope of works, time and costs of the project.
- 2.1.2 ENGINEERING is responsible for the delivery of the completed project detailed below,
 - 2.1.2.1 Project name: **ELECTRICAL ENGINEERING INEP PROJECT IN WARD 11 (TURNKEY) FOR 154 HOUSEHOLDS**
 - 2.1.2.2 Project Location: Ward 11
- 2.1.3 Engineering shall prepare a detailed project plan, with clear times lines and deliverable, and submit same to the Client, Umdoni Municipality within seven days of signing this contract.
- 2.1.4 Engineering undertakes to provide the following project management services, together with any services incidental thereto:
 - a) Establish the location and points of supply of ESKOM network for the connection
 - b) Select and appoint an ESKOM approved marketing Contractor to compile Customer information for the design and loading to the ESKOM Data Base.



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

2.1.5 Engineering shall perform the duties of –

2.1.5.1 Agent in respect of each Construction agreement; and

2.1.5.2 Principal agent in respect of each building agreement.

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

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

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

2.1.9 In carrying out the Services, Engineering must –


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- 2.1.9.1 Consult with the Client, Umdoni Municipality;
- 2.1.9.2 Obtain the Client, Umdoni Municipality's sign off on all designs, specifications, appointments and all other material aspects of the project;
- 2.1.9.3 Comply with the Client, Umdoni Municipality's instructions from time to time; and
- 2.1.9.4 Comply with all applicable laws and ensure that all service providers do likewise.

2.2 Appointment of other professionals

- 2.2.1 In execution of the Scope of Services under this contract, the Client, Umdoni Municipality will appoint other professionals in the built environment. Such appointments may be for:
 - 2.2.1.1 Contractors such as architects, quantity surveyors, consulting engineers and technical service providers.
- 2.2.2 The professionals appointed for purposes outlined above, shall enter into individual and separate contracts with the Client, Umdoni Municipality.
 - 2.2.2.1 Engineering shall not, under any circumstances, appoint or enter into contracts with professional teams envisaged above.
 - 2.2.2.2 Your appointment will not be limited to the initial budget but to future allocations as funding sources become available in line with the masterplan for this project since the appointment is on turnkey bases.

3

Remuneration

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

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

- Travel @ R4.75 per km
- Photocopies @ 60c per page
- Printing A4 @ R1.50 per sheet
- Printing A3 @ R5.50 per sheet
- Plotting A0 @ R102.00 per sheet
- Plotting A1 @ R82.00 per sheet
- Faxes @ R2.70 per page

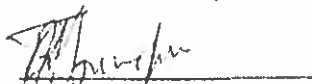
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Project Name	Project Type	Funding Recommended	Recommended Number of Connections
Alexander settlement	Household	R 1, 272, 000,00	44
Mbetheni settlement	Household	R 3, 179, 000,00	110
Total		R4, 451, 000.00	154

The next step that would follow would be to send a Memorandum of Agreement (MoA) in due course where DMRE & Municipality shall enter into contractual agreement that is valid for 2025/26 financial year. Municipality is urged to follow a preparatory programme (Pre-planning template) that accompanies this letter to mitigate project risks and avoid delays.

For any further clarity on the above matter please do not hesitate to contact Mr. Tasco Mbinda using the contact details above alternatively

Yours Sincerely



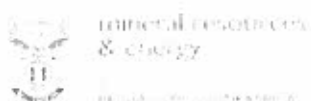
Mr. Tasco Mbinda

Regional Project Manager: INEP BPU (KZN-South)

Date: 24/03/2025

Address: INEP-BPU, 8th Floor, Mansion House, 12 John Slovo Street, Durban Central, 4000

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