



**Western Cape
Government**

Transport and Public Works

ROAD NETWORK MANAGEMENT

Email: Grace.Swanepoel@westerncape.gov.za

tel: +27 21 483 4669

Rm 335, 9 Dorp Street, Cape Town, 8001

PO Box 2603, Cape Town, 8000

REFERENCE: 16/6/4/1/1-C1103

ENQUIRIES: Ms GD Swanepoel

DATE: 27 June 2018

Hatch Africa (Pty) Ltd

PO Box 3878

TYGERVALLEY

7536

Attention: Mr C Manchip

Dear Sir

**CONTRACT C1103: APPOINTMENT OF HATCH AFRICA (PTY) LTD FOR THE PERIODIC
MAINTENANCE OF TR2/12 – KURLAND TO EASTERN CAPE BORDER (BLOUKRANS PASS)**

Attached please find a signed copy of the Agreement for Consulting Engineering Services dated 11 June 2018, for your records.

Yours faithfully

**LG FOURIE
CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT**



**Western Cape
Government**

Transport and Public Works

SERVICE LEVEL AGREEMENT FOR CONSULTING ENGINEERING SERVICES

CONTRACT NO. C1103

**THE PERIODIC MAINTENANCE OF TR2/12 – KURLAND
TO EASTERN CAPE BORDER (BLOUKRANSPAS)**

FOR: ROAD NETWORK MANAGEMENT

DATE: APRIL 2018

1. PREAMBLE

Whereas, the Engineering Professions Act No. 46 of 2000 regulates **Consulting Engineers**;

Whereas, the **Guideline** for Services and Processes for Estimating Fees for Persons Registered in terms of the Engineering Profession Act provides for the determination of the **Service** to be provided on the **Project** and the facilitation of estimations of appropriate fees that could be used in negotiations between **Clients** and **Consulting Engineers**;

And whereas, this **Service Agreement** is in line with this **Guideline**.

AGREEMENT ISSUE

This Service Level Agreement is issued by:

EXECUTIVE MANAGER
ROAD NETWORK MANAGEMENT BRANCH
DEPARTMENT OF TRANSPORT AND PUBLIC WORKS
WESTERN CAPE GOVERNMENT

P O Box 2603
CAPE TOWN
8000

1.1 SERVICE LEVEL AGREEMENT DOCUMENTATION

The **Service Level Agreement** is comprised of the following documents:

PART A : STANDARD CONDITIONS OF AGREEMENT
PART B : SPECIFIC DATA
PART C : AMENDMENTS TO THE STANDARD AGREEMENT
PART D : LIST OF ADDITIONAL DOCUMENTS ATTACHED TO THIS AGREEMENT
PART E : SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION
PART F : AGREEMENT

CONTENTS

1.	PREAMBLE	1—ii
1.1	SERVICE LEVEL AGREEMENT DOCUMENTATION	1—ii
1.2	SUMMARY OF OUTCOMES.....	1—iii
2.	DEFINITIONS AND INTERPRETATION.....	1
2.1	DEFINITIONS	1
2.2	INTERPRETATION.....	3
3.	OBLIGATIONS OF THE CONSULTING ENGINEER.....	4
3.1	DUTY OF CARE	4
3.2	DUE PROCESS.....	4
3.3	PROGRESS REPORTING.....	4
3.4	FEE AGREEMENTS.....	4
3.5	PENALTIES.....	4
3.6	EXTERNAL APPROVALS	5
3.7	ENTERING UPON LAND	5
3.8	EXERCISE OF AUTHORITY	5
3.9	DESIGNATED REPRESENTATIVE.....	5
3.10	CO-OPERATION WITH OTHERS	5
3.11	SERVICES OF OTHERS	5
3.12	NOTICE OF CHANGE	6
3.13	CONSTRUCTION MONITORING SERVICES	6
4.	OBLIGATIONS OF THE CLIENT	6
4.1	INFORMATION.....	6
4.2	DECISIONS	6
4.3	ASSISTANCE	6
4.4	NOTICE OF CHANGE	7
4.5	ISSUE OF INSTRUCTIONS	7
4.6	PAYMENT.....	7
5.	DURATION OF AGREEMENT.....	8
5.1	COMMENCEMENT.....	8
5.2	COMPLETION	8
5.3	FORCE MAJEURE	8
5.4	TERMINATION OR SUSPENSION BY THE CLIENT.....	8
5.5	TERMINATION OR SUSPENSION BY THE CONSULTING ENGINEER.....	9
5.6	PAYMENT DUE UPON SUSPENSION OR TERMINATION	9

5.7	RIGHTS AND LIABILITIES OF THE PARTIES	9
5.8	EXTENSION OF TIME.....	9
6.	REMUNERATION – GENERAL	11
6.1	PAYMENT.....	11
6.2	TIME FOR PAYMENT	11
6.3	DISPUTED INVOICES	11
6.4	REIMBURSABLE EXPENSES	11
6.5	INDEPENDENT AUDIT	11
7.	LIABILITY AND INSURANCE	12
7.1	LIABILITY.....	12
7.2	COMPENSATION.....	12
7.3	CLAIMS.....	12
7.4	INSURANCE FOR LIABILITY AND INDEMNITY	12
7.5	INDEMNITY BY THE CLIENT	12
7.6	EXCEPTIONS.....	13
7.7	RIGHTS OF RECOURSE AGAINST THE CONTRACTOR	13
8.	GENERAL PROVISIONS	14
8.1	GOVERNING LAW	14
8.2	CHANGES IN LEGISLATION.....	14
8.3	ASSIGNMENTS AND SUB-CONTRACTS.....	14
8.4	OWNERSHIP OF DATA, DESIGNS AND DOCUMENTS	14
8.5	CONFLICT OF INTEREST AND CORRUPTION	15
8.6	NOTICES	15
8.7	PUBLICITY AND PUBLICATION	15
8.8	CONFIDENTIALITY	16
8.9	VARIATIONS.....	16
8.10	SOLE AGREEMENT	16
9.	SETTLEMENT OF DISPUTES.....	17
9.1	SETTLEMENT.....	17
9.2	AMICABLE DISPUTE RESOLUTION	17
9.3	MEDIATION	17
9.4	ARBITRATION	18
10.	THE SERVICE AGREEMENT IS COMPRISED OF THE FOLLOWING DOCUMENTS:	20
10.1	SPECIAL CONDITIONS.....	21
10.2	EXCEPTIONAL SERVICES	21

10.3	SCHEDULE OF ADDITIONAL DOCUMENTS	22
10.4	EXTENT OF WORKS	23
10.5	APPLICABLE STAGES	23
11.	PROPOSED REMUNERATION LEVELS	24
11.1	ADDITIONAL FEES.....	24
11.2	PRE-AGREED OR TENDERED UNIT RATES	24

Handwritten signatures and initials in the bottom right corner of the page.

PART A: STANDARD CONDITIONS OF AGREEMENT

2. DEFINITIONS AND INTERPRETATION

2.1 DEFINITIONS

The following words and expressions shall have the meaning assigned to them except where the context requires otherwise:

- 2.1.1 **"Agreed Stage Deliverable Date"** means the date on which the deliverables (documents, drawings, reports, etcetera) for each **Stage** of the **Services** must be approved by the **Client**, in writing.
- 2.1.2 **"Client"** means the Contracting **Party** named in the **Service Agreement**. In this case the "Chief Directorate: Road Network Management" in the Western Cape Department of Transport and Public Works.
- 2.1.3 **"Consulting Engineer"** means any person registered in terms of the Engineering Profession Act named as the Contracting **Party** in the **Service Agreement** or his successors, who is appointed by the **Client** to perform the **Services**; or a juristic person who employs such professional.
- 2.1.4 **"Contract"** means the agreement or agreements between the duly authorised representatives of the **Client** and the **Contractor(s)** for the execution of all or a portion of the **Works**.
- 2.1.5 **"Contract Documents"** means all documents relating to the **Works** including those issued by or through the **Consulting Engineer**, including, but not limited to, the General Conditions of Contract, Tender Documents, Contract Drawings, Schedule of Quantities, Specifications and any amendments thereto.
- 2.1.6 **"Contractor"** means any person or juristic person under **Contract** to the **Client** to execute the **Works** or part thereof and includes any sub-contractor to whom any part of the **Works** has been sub-let by a **Contractor**.
- 2.1.7 **"Cost of the Works"** means the total final amount (or a fair estimate thereof), exclusive of Value Added **Tax**, certified or which would be certified for payment to **Contractors** (irrespective of who actually carries out the work) in respect of the **Works** designed, specified or administered by the **Consulting Engineer**, after deduction of liquidated damages or penalties, including:



- (a) A pro-rata portion of all preliminary and general items applicable to the **Works**; and
 - (b) The costs of new materials, goods or equipment, or a fair evaluation of such material, goods or equipment as if new, whether supplied new or otherwise by, or to, the **Client** and including the cost of a fair evaluation of the cost of installation (the sourcing, inspection and testing of such will comprise additional **Services** by the **Consulting Engineer**);
- 2.1.8 "Day" means a calendar **Day** and a "Year" means 365 **Days**.
- 2.1.9 "**Fee Agreement**" The record of negotiated fees and expenses applicable to each applicable **Stage** of the **Services**, within the framework provided in the "Engineering Profession Act 2000 (Act No. 46 of 2000); Engineering Council of South Africa: **Guideline** for Services and Processes for Estimating Fees for Persons registered in terms of the Act" as published in the Government gazette from time to time, in the format and according to the processes prescribed by the **Client**.
- 2.1.10 "**Guideline**" means the most recent Guideline for Services and Processes for Estimating Fees for Persons Registered in terms of the Engineering Profession Act (Act No. 46 of 2000), unless otherwise defined in this **Service Agreement** or its peripherals.
- 2.1.11 "**in writing**" means formal written correspondence, on the letterhead of the writer, signed by a duly authorised person, together with proof of delivery. Delivery may be by registered letter or by hand against written confirmation of receipt by receipt, return facsimile, or email. Any notice delivered by email shall be deemed to have been given only upon receipt by the sender of acknowledgement of receipt of any such email.
- 2.1.12 "**Party**" and "**Parties**" means the **Client** and the **Consulting Engineer** in terms of this **Service Agreement**.
- 2.1.13 "**Principal Agent**" means the entity, person, or professional **Services** provider named or appointed by the **Client** with full authority and obligation to act in terms of the **Contract** between the **Client** and the **Contractor**, and also to take overall responsibility for the administration of the **Project**, including the work of **Third Parties**. Depending on the form of **Contract** applicable, the term "**Agent**", or "**Engineer**", or "**Project Manager**" shall have the same meaning as "**Principal Agent**".
- 2.1.14 "**Project**" means the **Project** named in the **Service Agreement** for which the **Services** are to be provided.
- 2.1.15 "**Project Procedure Manual**" means the document that defines the scope, business processes and specific requirements for the completion of the **Stages** assigned to the **Consulting Engineer**, accessible on request.

- 2.1.16 "**Service**" means the **Stage** or **Stages** to be performed by the **Consulting Engineer** in accordance with the **Service Agreement** as defined in "PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION" or any subsequent amendment thereof.
- 2.1.17 "**Service Agreement**" means this Service Level Agreement for Consulting Engineering Services, PARTS A to F, together with any appendices thereto.
- 2.1.18 "**Stage**" means, any **Stage** assigned to the **Consulting Engineer** as a consequence of this **Service Agreement**, as defined in the **Project Procedure Manual**.
- 2.1.19 "**Tax**" means Value Added Tax, or any other statutory Tax or levy applicable to this **Service Agreement**.
- 2.1.20 "**Third Party**" means any person or entity other than the **Parties** to the **Service Agreement**, as the context requires.
- 2.1.21 "**Works**" means the activities on the **Project** for which **Contractors** are/will be contracted by the **Client** to perform, including the supply of goods and equipment.
- 2.1.22 "**Design Life**" means the life of the works for the period of time during which the components is expected by its designers to work within its specified parameters; in other words, the **life** expectancy of the item.

2.2 INTERPRETATION

- 2.2.1 The headings in the **Service Agreement** shall not be used in its interpretation
- 2.2.2 The singular is included in the plural; the masculine includes the feminine and vice versa where the context requires.
- 2.2.3 The documents forming part of this **Service Agreement** are to be taken as mutually explanatory of one another. If there is conflict between these documents, the last to be agreed shall prevail, unless otherwise specified in any of the provisions of the **Service Agreement**, then the following order of priority shall apply in the interpretation of the **Parties'** obligations, and the last to be agreed shall prevail:

- (a) Standard Conditions of Agreement
- (b) Specific Data
- (c) Amendments to the Standard Agreement
- (d) List of additional documents attached to this Agreement
- (e) Scope of Services, Remuneration and Time for completion (Including **Fee Agreement** that may be concluded from time to time)
- (f) Agreement

2.2.4 All monetary amounts include **Tax**, except where it is explicitly excluded.

2.2.5 Words or expressions in bold font are defined in clause 2.1

3. OBLIGATIONS OF THE CONSULTING ENGINEER

3.1 DUTY OF CARE

- 3.1.1 The **Consulting Engineer** shall exercise reasonable professional skill, care and diligence in the performance of the **Services** according to the schedule provided by the **Client** as specified in "PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION", or any amendment thereof.

3.2 DUE PROCESS

- 3.2.1 The **Consulting Engineer** will, unless specifically instructed otherwise **in writing**, follow the processes and procedures prescribed in the **Project Procedure Manual** as provided by the **Client** and amended from time to time.

3.3 PROGRESS REPORTING

- 3.3.1 The **Consulting Engineer** shall be required to provide progress reports, as prescribed in the **Project Procedure Manual**.

3.4 FEE AGREEMENTS

- 3.4.1 The **Consulting Engineer** will enter into a **Fee Agreement** with the **Client** before commencing with any **Stage** of the **Services**.

3.5 PENALTIES

- 3.5.1 Penalties will be applied on a pro-rata basis for the late or non-submission of **Project** deliverables, as indicated in "PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION".

3.6 EXTERNAL APPROVALS

- 3.6.1 The **Consulting Engineer** shall obtain all approvals, licences and permits from governmental, regional and municipal authorities having jurisdiction over the **Project**, unless otherwise stated under special conditions in "PART C: AMENDMENTS TO THE STANDARD AGREEMENT"

3.7 ENTERING UPON LAND

- 3.7.1 For the purpose of entering upon land for any purpose related to the completion of the **Services**, the **Consulting Engineer's** staff, or any appointed **Third Party**, shall be authorised for entry on behalf of the **Client**.

3.8 EXERCISE OF AUTHORITY

- 3.8.1 Where the **Services** include the exercise of powers to certify, decide or exercise discretion in terms of a **Contract** between the **Client** and any **Third Party**, provided that the details of such power and duties are acceptable to the **Consulting Engineer** and agreed in writing, then the **Consulting Engineer** shall act in accordance with that **Contract** and where required to perform this function he shall do so fairly between the **Client** and the **Third Party**, not as an arbitrator, but as a professional exercising his judgement with reasonable skill, care and diligence.

3.9 DESIGNATED REPRESENTATIVE

- 3.9.1 The **Consulting Engineer** shall designate in writing a person to act as his authorised representative and such person shall have complete authority to receive instructions and to give information to the **Client** on behalf of the **Consulting Engineer**.
- 3.9.2 The designated representative of the **Consulting Engineer** shall be an Engineering Council of South Africa ("ECSA") registered professional Engineer, unless otherwise approved under the special conditions in "PART C: AMENDMENTS TO THE STANDARD AGREEMENT".

3.10 CO-OPERATION WITH OTHERS

- 3.10.1 The **Consulting Engineer** shall perform the **Services** in conjunction with any other **Third Parties** or specialists who are providing **Services** to the **Project** and he may make recommendations to the **Client** in respect of such appointments for certain parts of the **Project**.

3.11 SERVICES OF OTHERS

- 3.11.1 The **Consulting Engineer** shall, after obtaining the **Client's** approval, engage such other **Third Parties** and specialists as may be necessary for the proper completion of the **Project**. Such approval will be recorded in the **Fee Agreement** before any expenditure is incurred.
- 3.11.2 The **Client** will provide the standard form of agreement between the **Consulting Engineer** and the **Third Party**, on request.

- 3.11.3 Where the **Consulting Engineer** is required to administer the work of others or of any **Contract** on behalf of the **Client**, then the **Client** shall only issue instructions related to such work or **Contract** through the **Consulting Engineer**.
- 3.11.4 The **Consulting Engineer** shall be responsible for its own performance, as well as the performance of any **Third Party** under its control during the completion of the **Project**.
- 3.11.5 Where a **Third Party** is not performing as expected, it will be the duty of the **Consulting Engineer** to inform the **Client** as soon as the non-performance becomes apparent.
- 3.11.6 The **Consulting Engineer** shall be responsible for the remuneration of any **Third Party**.
- 3.11.7 Where the **Third Party** provides an additional **Service** which is not reasonably included under the fee-based **Services** described under the **Guideline** on approval by the **Client**, the **Consulting Engineer** may reclaim the expenditure inclusive of a pre-agreed mark-up recorded in the **Fee Agreement**.

3.12 NOTICE OF CHANGE

- 3.12.1 On becoming aware of any matter which shall materially change or has changed the scope, cost, or timing of the **Services** or the **Works**, the **Consulting Engineer** shall, **in writing**, give notice to the **Client**, save that the **Consulting Engineer** is empowered to make minor changes or variations within the overall programme or budget and within such parameters as are defined by the **Client**, provided that such changes are reported timeously to the **Client**.

3.13 CONSTRUCTION MONITORING SERVICES

- 3.13.1 The **Consulting Engineer** will monitor construction to the level agreed between the **Parties** in the **Fee Agreement(s)** applicable to the construction stage.

4. OBLIGATIONS OF THE CLIENT

4.1 INFORMATION

- 4.1.1 The **Client** shall timeously provide to the **Consulting Engineer**, free of cost, all information that may be reasonably required for the provision of the **Services**, including, but not limited to providing all available maps, plans, record drawings and other relevant information.

4.2 DECISIONS

- 4.2.1 The **Client** shall give his decision on all matters properly referred to him by the **Consulting Engineer**, **in writing**, within a reasonable time so as not to delay the **Services** or the **Contract**.

4.3 ASSISTANCE

- 4.3.1 The **Client** shall co-operate with the **Consulting Engineer** and shall not interfere with nor obstruct the proper performance of the **Services**. The **Client** shall as soon as reasonably possible:

- (a) Arrange for the **Consulting Engineer's** ready access to the **Project** site
- (b) Designate **in writing** a person to act with his complete authority to give instructions for and to receive information on his behalf.

4.4 NOTICE OF CHANGE

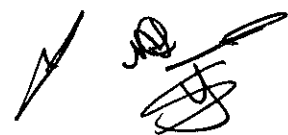
- 4.4.1 On becoming aware of any matter which may materially change or has changed the scope, cost, or timing of the **Services** or the **Works**, or on becoming aware of any defect or deficiencies in the **Services** or the **Works**, the **Client** shall, **in writing**, give appropriate notice to the **Consulting Engineer**.

4.5 ISSUE OF INSTRUCTIONS

- 4.5.1 The **Client** shall not enter into any agreement or contract that describes the duties of the **Consulting Engineer**, or imposes obligations on him, without first obtaining the **Consulting Engineer's** agreement thereto, **in writing**.

4.6 PAYMENT

- 4.6.1 The **Client** shall pay the **Consulting Engineer** for the **Services** in accordance with clause 6 of this **Service Agreement**.



5. DURATION OF AGREEMENT

5.1 COMMENCEMENT

- 5.1.1 The **Services** of the **Consulting Engineer** shall commence from the date of the first approved **Fee Agreement** subsequent to the signing of this **Service Agreement**.

5.2 COMPLETION

- 5.2.1 Unless terminated under one of the other clauses, the appointment of the **Consulting Engineer** shall be completed when the **Consulting Engineer** completes the final **Stage**, or when he renders the closing account in terms of this **Service Agreement**, whichever is the later.

5.3 FORCE MAJEURE

- 5.3.1 If circumstances arise for which the **Consulting Engineer** is not responsible and which make it impractical or impossible for the **Consulting Engineer** to perform the **Services** in the normal manner as contemplated by the **Parties** in accordance with the **Service Agreement** in whole or in part, then the **Consulting Engineer** shall promptly notify the **Client**.
- 5.3.2 If, in those circumstances, certain **Services** have to be suspended, the time for the completion shall be extended by the extent of the delay plus a reasonable period for their resumption or, if the speed of performing certain **Services** has to be reduced, the time for their completion shall be extended as may be necessary due to the circumstances. The **Client** shall pay to the **Consulting Engineer** such additional fees and expenses as may be agreed as appropriate to the work undertaken by the **Consulting Engineer** in providing the necessary additional **Services**.

5.4 TERMINATION OR SUSPENSION BY THE CLIENT

- 5.4.1 The **Client** may suspend all or part of the **Services** or terminate this **Service Agreement** by giving, **in writing**, at least thirty (30) **Days'** notice to the **Consulting Engineer** who shall immediately make arrangements to stop the **Services** and minimise further expenditure.
- 5.4.2 If the **Consulting Engineer** is, without justification, not discharging his obligations, the **Client** may inform the **Consulting Engineer** immediately **in writing**, including the grounds for the notice. If a satisfactory response is not received within 7 (seven) **Days**, the **Client** may after the expiration of the 7 (seven) days, terminate this **Service Agreement** by giving at least 14 (fourteen) days notice to the **Consulting Engineer**, who shall immediately make arrangements to stop the **Services** and minimise further expenditure.
- 5.4.3 If it is shown that the **Consulting Engineer** is in breach of clause 8.5 and notwithstanding the sanctions to which the **Consulting Engineer** may be subject to by law, the **Client** will be entitled to terminate the **Service Agreement**, in writing.

5.5 TERMINATION OR SUSPENSION BY THE CONSULTING ENGINEER

- 5.5.1 The **Consulting Engineer** may terminate the **Service Agreement** by giving at least thirty (30) **Days'** notice, **in writing**, or at his discretion and without prejudice to the right to terminate, may immediately suspend or continue suspension of performance of the whole or part of the **Services**;
- (a) When, ninety (90) Days after submission of a valid invoice, the **Consulting Engineer** has not received payment of that part of which has not by that time been contested **in writing** by the **Client**, or
 - (b) When the **Services** have been suspended under clause 5.3 or 5.4 and the period of suspension has exceeded one hundred and eighty (180) Days, or it is clear to the **Consulting Engineer** that it will be impossible or impractical to resume the suspended **Services** before the period of suspension has exceeded one hundred and eighty (180) Days, or
 - (c) If the **Client** is in material breach of a term of the **Service Agreement** and fails to rectify such breach within thirty (30) Days of the receipt of **written** notice requiring him to do so, or
 - (d) If it is shown that the **Client** is in breach of clause 7.5 and notwithstanding the sanctions to which the **Client** may be subject to by law, the **Consulting Engineer** will be entitled to terminate the **Service Agreement** immediately in writing.

5.6 PAYMENT DUE UPON SUSPENSION OR TERMINATION

- 5.6.1 Should instruction having been given by the **Client** to the **Consulting Engineer** to proceed with any **Stage** of the **Services** and the whole or part of the **Works** is cancelled or abandoned or postponed, **in writing**, for a period of more than one hundred and eighty (180) **Days**, the **Consulting Engineer** shall, upon agreement with the **Client**, be remunerated for **Services** performed and all reasonable expenses incurred as a result of the suspension or termination of the approved **Stage(s)** not caused by the **Consulting Engineer's** conduct.


5.7 RIGHTS AND LIABILITIES OF THE PARTIES

- 5.7.1 Completion, suspension, or termination of the **Service Agreement** shall not prejudice or affect the accrued rights or liabilities of the **Parties**.

5.8 EXTENSION OF TIME

- 5.8.1 The **Consulting Engineer** may request an extension to the time allowed for completion of the **Services** if it is, or will be, delayed in completing the **Services** by any of the following causes:

- (a) Additional **Services** ordered by the **Client**
- (b) Failure of the **Client** to fulfil his obligations under the **Service Agreement**
- (c) Any delay in the performance of the **Services** which is not due to the **Consulting Engineer's** default
- (d) Suspension of the **Services**



6. REMUNERATION – GENERAL

6.1 PAYMENT

- 6.1.1 The **Client** shall remunerate the **Consulting Engineer** for **Services** rendered in accordance with the details stated in "PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION" which forms part of this **Service Agreement** at rates and prices agreed between the **Client** and the **Consulting Engineer** by means of a revised Consultant **Fee Agreement** to be agreed when the **Service** moves from one **Stage** to the next, or as circumstances require.

6.2 TIME FOR PAYMENT

- 6.2.1 Amounts due to the **Consulting Engineer** shall be paid in full on the agreed dates, or within thirty (30) **Days** of the date that an undisputed, properly completed invoice is received by the **Client**.
- 6.2.2 If the **Consulting Engineer** does not receive payment by the time stated, then the **Consulting Engineer** may claim interest at the prevailing repo rate plus three percentage points compounded monthly and calculated from the due date of payment.

6.3 DISPUTED INVOICES

- 6.3.1 If any item or part of an item in an invoice submitted by the **Consulting Engineer** is disputed by the **Client**, the **Client** shall return the entire invoice to the **Consulting Engineer** no later than seven (7) **Days** prior to the date on which the payment becomes due, with reasons.
- 6.3.2 The **Consulting Engineer** will then have to re-submit the invoice where after the **Client** will have thirty (30) **Days** to make payment unless the invoice is disputed.

6.4 REIMBURSABLE EXPENSES

- 6.4.1 All reimbursable expenses will be pre-approved by the **Client** in the **Fee Agreement** for each **Stage**. Incurred expenditure shall be reimbursed inclusive of the pre-agreed mark-up percentage in the first invoice following the expense.

6.5 INDEPENDENT AUDIT

- 6.5.1 For any reimbursable expenses, professional time or private motor transport claimed in terms of the **Fee Agreement**, the **Consulting Engineer** shall maintain records which clearly identify such time and expenses and shall retain such records for a period of twelve (12) months after the completion or termination of the **Services**.
- 6.5.2 Within this period the **Client** may, **in writing**, not less than fourteen (14) **Days** beforehand, require that a reputable and independent firm of accountants, nominated by the **Client** and at the **Client's** expense, audit any such time and expenses claimed by the **Consulting Engineer**, by attending during normal working hours at the office where the records are maintained.

7. LIABILITY AND INSURANCE

7.1 LIABILITY

7.1.1 Neither **Party** shall be liable to the other for anything arising out of or in connection with this **Service Agreement** unless a breach of the obligations in terms of this **Service Agreement** is established against them. Neither **Party** shall have any separate delictual right of action against the other.

7.2 COMPENSATION

7.2.1 If it is established that either **Party** is liable to the other, compensation shall be payable only on the following terms: -

(a) Such compensation shall be limited to the amount of the reasonably foreseeable loss and damage suffered as a result of such breach. Neither **Party** shall be liable for any indirect or consequential damages arising out of or relating to its performance or failure to perform under this **Service Agreement**, save and except where the indirect or consequential loss is incurred as a result of the fraud, gross negligence or willful, reckless or deliberate breach of the **Service Agreement** by any **Party**, its employees, agents or contractors.

(b) If either **Party** is considered to be liable jointly with **Third Parties** to the other, the proportion of compensation payable by that **Party** shall be limited to the proportion of liability which is attributable to his breach.

7.3 CLAIMS

7.3.1 If either **Party** makes an unsuccessful claim for compensation against the other, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of clause 9 for such costs as may be awarded.

7.4 INSURANCE FOR LIABILITY

7.4.1 The **Consulting Engineer** agrees to arrange and maintain professional indemnity insurance cover at own cost.

7.5 INDEMNITY BY THE CLIENT

7.5.1 The **Client** shall indemnify the **Consulting Engineer** against the adverse effects of all claims by **Third Parties** which arise after the design life of the work emanating from the **Service**.

7.5.2 The **Client** does not indemnify the **Consulting Engineer** for any damages suffered as a consequence of the body of work, or as a result of mitigating the effect of the implementation of that professional body of work.

7.6 EXCEPTIONS

- 7.6.1 Clause 7.5 shall not apply to claims arising from deliberate misconduct, fraud, fraudulent misrepresentation or reckless misconduct.

7.7 RIGHTS OF RECOURSE AGAINST THE CONTRACTOR

- 7.7.1 The **Client** undertakes to exhaust all its contractual remedies against the **Contractor**, before exercising any contractual rights of recourse it may have against the **Consulting Engineer** in the event of the **Client** suffering any damages as a result of any breach by the **Contractor** of his obligations in terms of the **Contract Documents**.

Handwritten signatures and initials in the bottom right corner of the page.

8. GENERAL PROVISIONS

8.1 GOVERNING LAW

- 8.1.1 This **Service Agreement** shall be governed by the law of the Republic of South Africa.

8.2 CHANGES IN LEGISLATION

- 8.2.1 If, after the date of the **Service Agreement**, the cost, or duration of the **Services** is altered as a result of changes in, or additions to, any statute, regulation or by-law, or in the requirements of any authority having jurisdiction over any matter in respect of the **Project**, then the agreed remuneration and time for completion shall be adjusted in order to reflect the impact of those changes, by means of a revised **Fee Agreement**.

8.3 ASSIGNMENTS AND SUB-CONTRACTS

- 8.3.1 Should the **Consulting Engineer**, being an individual or the last survivor of a partnership or body corporate, die or be prevented, by illness or any other circumstances beyond his control, from performing the obligations implied by this **Service Agreement**, this **Service Agreement** shall be terminated without prejudice to the accrued rights of either **Party** against the other.
- 8.3.2 Except as defined in clause 8.3.1 above, each **Party** binds itself and its partners, successors, executors, administrators and legal representatives to the other **Party** in respect of all obligations and liabilities of this **Service Agreement**.
- 8.3.3 Neither **Party** shall assign, sublet or transfer any right or obligations under this **Service Agreement** without the written consent of the other **Party**, which consent shall not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under this **Service Agreement**.
- 8.3.4 The **Consulting Engineer** shall notify the **Client** of any, initiation, variance or termination of any sub-contract for performance of all or part of the **Services**.

8.4 OWNERSHIP OF DATA, DESIGNS AND DOCUMENTS

- 8.4.1 The **Client** shall retain copyright of all **Project** documents and drawings prepared by the **Consulting Engineer**. The **Consulting Engineer** shall be entitled to use them or copy them only for the **Project** and the purpose for which they are intended and need not obtain the **Client's** permission to copy for such use.
- 8.4.2 The ownership of data and factual information collected by the **Consulting Engineer** and paid for by the **Client** shall, after payment by the **Client**, lie with the **Client**.

8.4.3 The **Client** shall have no right to use any documents referred to in this clause where any or all of the fees and expenses payable to the **Consulting Engineer** have not been paid in accordance with this **Service Agreement**.

8.4.4 The **Consulting Engineer** shall not be liable in any way for the use of any of the documents other than as originally intended for the **Project** and the **Client** hereby indemnifies the **Consulting Engineer** against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

8.5 CONFLICT OF INTEREST AND CORRUPTION

8.5.1 Unless otherwise agreed **in writing** by the **Client**, the **Consulting Engineer** and his personnel shall have no interest in nor receive remuneration in connection with the **Project** except as provided for in the **Service Agreement**. The **Consulting Engineer** shall not engage in any activity that may conflict with the interests of the **Client** under the **Service Agreement**.

8.5.2 Either **Party** shall be entitled to terminate the **Service Agreement** with immediate effect if it is shown that the other **Party** is guilty of:

- (a) Offering, giving, receiving or soliciting anything of value with a view to influence the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conclusion of the **Service Agreement**; or
- (b) Misrepresentation of facts in order to influence a selection process or the execution of any **Contract**.

8.6 NOTICES

8.6.1 Notices under the **Service Agreement** shall be **in writing** and will take effect from the moment of receipt at the physical address stated in "PART F: AGREEMENT".

8.6.2 Wherever this **Service Agreement** provides for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be **in writing** to the address for the recipient's communications as stated in PART F: AGREEMENT or to such other address as may be notified **in writing** by the recipient to the other **Party**.

8.7 PUBLICITY AND PUBLICATION

8.7.1 Unless otherwise specified in the special conditions in "PART C: AMENDMENTS TO THE STANDARD AGREEMENT", the **Consulting Engineer** shall not release public or media statements or publish material related to the **Services** or **Project** within two (2) **Years** of completion of the **Services** without approval of the **Client**, **in writing**, which approval by the **Client** shall not be unreasonably withheld.

- 8.7.2 The **Client** shall not make premeditated public or media statements relating to the **Services** provided by the **Consulting Engineer** without the prior and full knowledge and approval of the **Consulting Engineer**, which approval shall not be unreasonably withheld.

8.8 CONFIDENTIALITY

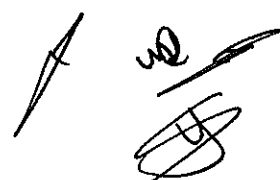
- 8.8.1 Both **Parties** shall keep all commercially sensitive information obtained by them in the context of the **Service Agreement** confidential and shall not divulge it without the written approval of the other **Party**.

8.9 VARIATIONS

- 8.9.1 The **Client** may order variations to the **Services in writing**, or may request the **Consulting Engineer** to submit proposals, including the time and cost implications, for variations to the **Services**.
- 8.9.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the **Service Agreement** of any variations to the **Services** ordered by the **Client**, including any increase in the **Consulting Engineer's** fees and reimbursable costs, shall be agreed between the **Consulting Engineer** and the **Client**, by means of a revised **Fee Agreement**.

8.10 SOLE AGREEMENT

- 8.10.1 This **Service Agreement** together with the relevant attachments and appendices constitutes the sole agreement for the **Services** between the **Parties** and no representation not contained herein shall be of any force or effect between the **Parties**. No amendments will be of any force and effect unless reduced to writing and signed by both **Parties** and expressly intended to form part of the **Service Agreement**.

Handwritten signatures and initials in black ink, located in the bottom right corner of the page. There are three distinct marks: a long, sweeping signature, a set of initials, and a circular stamp or signature.

9. SETTLEMENT OF DISPUTES

9.1 SETTLEMENT

- 9.1.1 The **Parties** agree that all disputes or differences whatsoever ("Disputes"), which may at any time arise between the **Parties** hereto concerning any matter specified in this **Agreement**, or its construction, validity, or either of them under or by virtue of this **Agreement** or otherwise or as to any other matter in any way connected with or arising out of, or in relation to, the subject matter of this **Service Agreement** shall be dealt with in accordance with the provisions of this clause 9.

9.2 AMICABLE DISPUTE RESOLUTION

- 9.2.1 If any Dispute arises, representatives of the **Parties** with the necessary authority to settle the Dispute will, within fourteen (14) **Days** of written notice from one **Party** to the other, meet in good faith in an effort to resolve the Dispute.
- 9.2.2 If the Dispute is not resolved in accordance with clause 9.2.1, duly authorised executives from each **Party** will, within fourteen (14) **Days** of written notice from one **Party** to the other, meet in good faith in an effort to resolve the Dispute. If the Dispute is not resolved at that meeting, the **Parties** may, but shall not be obligated to, attempt to settle it by mediation in accordance with clause 9.3.

9.3 MEDIATION

- 9.3.1 Unless otherwise agreed between the **Parties**, the **Parties** shall attempt to agree upon a neutral mediator. Should the **Parties** be unable to agree within fourteen (14) **Days** of a notice from one **Party** to the other requesting mediation, then either **Party** may request that a mediator be appointed by the President of the Engineering Council of South Africa (ECSA). The appointment by the ECSA President shall be binding on the **Parties** unless they agree to another named mediator at any time.
- 9.3.2 When the mediator has been appointed on his terms and conditions of engagement, either **Party** can initiate the mediation by giving the other **Party** notice **in writing** requesting a start to the mediation. The mediation will start not later than twenty one (21) **Days** after the date of the notice.
- 9.3.3 The mediation shall be conducted in accordance with the procedures required by the appointed mediator.
- 9.3.4 All negotiations or discussions carried out in the mediation shall be conducted in confidence and are not to be referred to in any concurrent or subsequent proceedings, unless they conclude with a written legally binding agreement.

- 9.3.5 If the **Parties** accept the mediator's recommendations, or otherwise reach agreement on the resolution of the Dispute, such agreement shall be recorded **in writing** and, once signed by the designated representative, shall be binding on the **Parties**.
- 9.3.6 If no agreement is reached, either **Party** may invite the mediator to provide to both **Parties** a non-binding opinion **in writing** on the Dispute. Such opinion shall not be used in evidence in any concurrent or subsequent proceedings, without the prior written consent of both **Parties**.
- 9.3.7 The **Parties** will bear their own costs of preparing and submitting evidence to the mediator. The costs of the mediation and of the mediator's **Services** shall be borne equally between the **Parties** unless otherwise agreed and recorded in accordance with clause 9.3.3.
- 9.3.8 No **Party** may commence an arbitration of any Dispute until it has attempted to settle the Dispute with the other **Party** by mediation. However, either **Party** may commence arbitration if the Dispute has not been settled within ninety (90) **Days** of the giving of the notice under clause 9.3.2
- 9.3.9 If the mediation fails then the **Parties** will attempt jointly to make a written record of those matters (if any) relating to the Dispute which have been agreed to by them, for submission in any later arbitration. The mediator's role will cease, at the latest, upon the commencement of any arbitration. The mediator will not be available to appear as a witness in the arbitration, nor to provide any additional evidence obtained during the mediation.

9.4 ARBITRATION

- 9.4.1 Either **Party** may at any time by written notice to the other refer the Dispute to arbitration by a single arbitrator to be mutually agreed upon or, failing agreement within fourteen days, to be nominated by the President of the Consulting Engineers South Africa (CESA).
- 9.4.2 The arbitration shall be in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the **Parties**, or failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators Southern Africa current at the date the arbitrator is appointed.
- 9.4.3 Referral to arbitration shall take place within ninety (90) **Days** of the date of notice from either **Party** declaring that the settlement negotiations under clause 9.2 have failed, or if mediation is agreed on, within ninety (90) **Days** of the date of the mediator's opinion, or the date upon which the mediator declares that the mediation has failed. Claims not brought within the time periods set out herein will be deemed to be waived.
- 9.4.4 The decision of the Arbitrator shall be final and binding on the **Parties**.

- 9.4.5 The seat of the arbitration will be Cape Town, South Africa.
- 9.4.6 Either **Party** is entitled to approach the High Court of South Africa on an urgent or interim basis prior to the arbitrator being formally appointed.



PART B: SPECIFIC DATA

10. THE SERVICE AGREEMENT IS COMPRISED OF THE FOLLOWING DOCUMENTS:

PART A: STANDARD CONDITIONS OF AGREEMENT

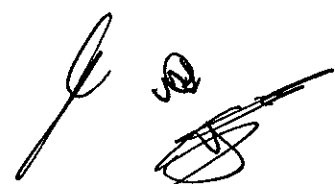
PART B: SPECIFIC DATA (THIS SECTION)

PART C: AMENDMENTS TO THE STANDARD AGREEMENT

PART D: LIST OF ADDITIONAL DOCUMENTS ATTACHED TO THIS AGREEMENT

PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION

PART F: AGREEMENT

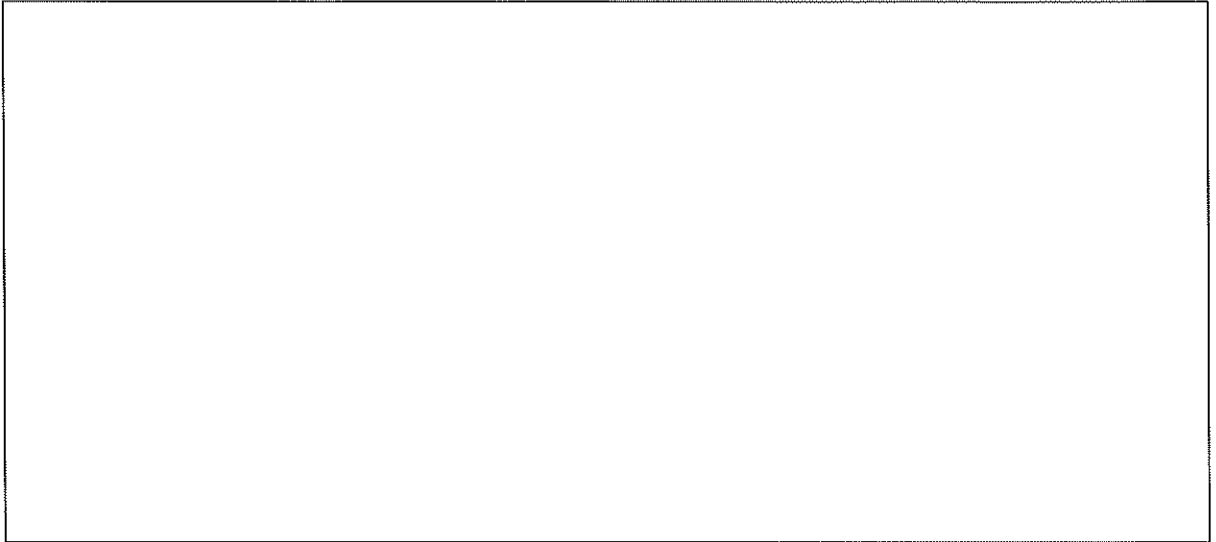
Handwritten signatures in black ink, located in the bottom right corner of the page. There are three distinct signatures, with the largest one being a complex, stylized flourish.

PART C: AMENDMENTS TO THE STANDARD AGREEMENT

The following amendments to the Standard Conditions of Agreement in "PART A: STANDARD CONDITIONS OF AGREEMENT" are agreed:

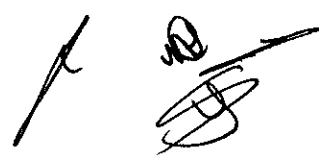
10.1 SPECIAL CONDITIONS

The following Special Conditions apply to this **Service Agreement**.



10.2 EXCEPTIONAL SERVICES

The **Services** include the following Exceptional Services.



PART D: LIST OF ADDITIONAL DOCUMENTS ATTACHED TO THIS AGREEMENT

10.3 SCHEDULE OF ADDITIONAL DOCUMENTS

The following additional documents form part of this **Service Agreement**:

Approved **Fee Agreements**

Handwritten signatures in black ink, appearing to be initials or full names, located in the bottom right corner of the page.

PART E: SCOPE OF SERVICES, REMUNERATION AND TIME FOR COMPLETION

The extent of the works for which **Services** are to be provided by the **Consulting Engineer** in terms of this **Service Agreement** is defined in clause 10.4 below. If necessary, the extent of works, applicable stages, remuneration levels or additional fees may be revised by mutual agreement between the **Parties** and attaching these revisions to this **Service Agreement**.

10.4 EXTENT OF WORKS

RNIS Road Number	Start km	End km	Comments (Optional)
TR00212	14.14	37.25	

10.5 APPLICABLE STAGES

Stage	Included	Excluded	Agreed Stage Delivery Date (dd/mm/yyyy)	Agreed Expense Limits (R) (Leave blank if not limited)	Penalties for late delivery (% of Stage fees forfeited on a pro-rata basis for every 7 Days past the Agreed Stage Deliverable Date)
	Mark with "X"				
Report Stage (time and cost)					
Inception	X		13h00 27/07/2018		10%
Concept and Viability	X				
Design Development	X				
Documentation and Procurement	X				
Contract Administration and Inspection	X				
Close Out	X				
Other (Specify)					

11. PROPOSED REMUNERATION LEVELS

Deliverable (e.g. Reseal, Rehabilitate, Upgrade)	Approved Fee Category (e.g. "AR", "ES", "FC")	Comments (Optional)
RESEAL	AR	
ROAD REHABILITATION	AR	
UPGRADING OF GRAVEL ROADS	BR	

11.1 ADDITIONAL FEES

Additional Services not included in the approved Stages	Additional fee as percentage of the Works	Comments (Optional)
Engineering Management Services		
Mediation, Arbitration and Litigation Services		
Principal Agent Services		
Additional percentage for non-contiguous sites		
Other: Specify_____		

11.2 PRE-AGREED OR TENDERED UNIT RATES

List any deliverables with pre-agreed or tendered rates below:

[illegible]

PART F: AGREEMENT

Between

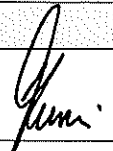


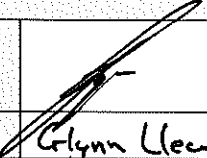
the "Client"	CHIEF DIRECTORATE: ROAD NETWORK MANAGEMENT BRANCH		
Postal Address	PO BOX 2603 CAPE TOWN 8001		
Physical Address	DEPARTMENT OF TRANSPORT AND PUBLIC WORKS ROAD NETWORK MANAGEMENT BRANCH 9 DORP STREET CAPE TOWN 8001		
Representative Contact Details			
Name	MR LENN FOURIE		
Telephone	+27 21 483 5304	Mobile	
Email	LENN.FOURIE@WESTERNCAPE.GOV.ZA	Fax	

AND

the "Consulting Engineer"	Hatch Africa (Pty) Ltd		
Postal Address	P.O.Box 3878, Tygervalley, 7536		
Physical Address	2nd floor, Falsebay Building, Tygerberg Park 163 Uyskrige drive, Platteklouw, Cape town, 7500		
Representative Contact Details			
Name	Yvette Scholtz		
Telephone	021 911 5823	Mobile	082 7709386
Fax	021 911 5824	Fax	

The Parties hereby agree to the terms of the Service Agreement:			
the	25	(Day)	
of	June	(month)	
	2018	(Year)	
at	Cape Town	(place)	

WESTERN CAPE GOVERNMENT
TRANSPORT AND PUBLIC WORKS
ROAD NETWORK MANAGEMENT

For the Employer:		For the Consulting Engineer:	
Signature		Signature	
Name	LG Fourie	Name	Xvette Scholtz
Date	25/06/2018	Date	11/06/2018
Witness:		Witness:	
Signature		Signature	
Name	N Daniels	Name	Glynn Llewellyn
Date	25/06/2018	Date	11/06/2018

