Demetrius Williams
& Associates
Civil / Structural Engineers and Project Managers
Reg: - 2008 / 004538 / 23
We help shape a better South Africa

Our ref No : SLM/055/10

Your ref No: T 09 (10/11)

The Municipal Manager
SETSOTO LOCAL MUNICIPALITY
P.O. Box 116
FICKSBURG
9730

Date: 4 May 2011

Attention: Mr: Bafana J. Mthembu

PROJECT NO: T 09 (10/11) CONSTRUCTION OF PAVED ROADS AND STORM WATER DRAINAGE IN CLOCOLAN/HLOHLOLWANE:- SERVICE LEVEL AGREEMENT

Attached hereto find 2 copies of the Service Level Agreement between yourself and Demetrius Williams and Associates for your approval and signature.

Should Setsoto Municipality wish to exclude, add or correct detail, please indicate the specific clauses with amendments, additions, etc and forward to our office to effect the changes.

Our hope you find this in order.

Demetrius Williams
obo Demetrius Williams & Associates

27 Union Street
Dumisani Building
Office Suite # 2
BETHLEHEM 9700

Tel: +27 (0) 58 303 0902 / 1057 Fax: +27 (0) 86 694 7059
e-mail: admin@dwaa.co.za

P.O. Box 2063
BETHLEHEM
9700

Directors: D Williams & CM Williams

DEMETRIUS WILLIAMS & ASSOCIATES CC

SETSOTO LOCAL MUNICIPALITY

Form of Agreement

Civil Engineering Services for Hlohlolwane/ Clocolan

Demetrius Williams

November 2010

Form of Agreement for Consulting Engineering Services

Project: - **UPGRADING OF PAVED ROADS & STORM WATER DRAINAGE**

Client: - **SETSOTO LOCAL MUNICIPALITY**

Appointee: - DEMETRIUS WILLIAMS & ASSOCIATES CC

(In Association with Louw Human & Loubser Consulting Engineers (Pty) Ltd - Bethlehem)

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CONDITIONS OF AGREEMENT

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CONDITIONS OF AGREEMENT

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

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

(1) **"Agreement"** means this Form of Agreement for Consulting Engineering Services, including the Agreement and Specific Provisions, the Conditions of Agreement, together with any appendices thereto.

(2) **"Client"** means the contracting party named in the Agreement, who employs the Consulting Engineer.

(3) **"Consulting Engineer"** means the contracting party named in the Agreement, who is employed by the Client to perform the services.

(4) **"Contract"** means the agreement or agreements between the Client, or his designated representative, and the contractor(s) for the execution of all or a portion of the works by the contractor(s).

(5) **"Contract Documents"** means all documents relating to the works including those issued by or through the Consulting Engineer or the Lead Consultant, including, but not limited to, the contract drawings, bills of quantities, specifications and schedules and any amendments thereto.

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(6) **"Contractor"** means any person or legal 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.

(7) **"Cost of the works"** means the total amount, exclusive of value added tax, certified or which would be certified for payment to contractors (irrespective of who actually carries out the works) in respect of the works designed, specified or administered by the Consulting Engineer, before 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 or a fair evaluation of the cost of installation (the sourcing, inspection and testing of such will comprise additional services by the Consulting Engineer);

(8) **"day"** means the period between any one midnight and the next.

(9) **"month"** means a period of one month according to the Gregorian calendar commencing with any day of the month.

(10) **"party"** and **"parties"** means the Client and the Consulting Engineer and "third party" means any other person or entity, as the context requires.

(11) **"Principal Agent or Lead Consultant"** means the party appointed by the Client to take overall responsibility for the administration of the project, including the work of other Consulting Engineers.

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(12) **"Project"** means the project named in the Agreement for which the services are to be provided.

(13) **"Services"** means the service or services to be performed by the Consulting Engineer in accordance with the Agreement and comprises Normal Services, Additional Services and Exceptional Services.

(14) **"Stage"** means either the Report Stage, the Preliminary Design Stage, the Design and Tender Stage, the Construction Stage or any other Stage of the services to be performed by the Consulting Engineer, as described in this Agreement.

(15) **"Tax"** means Value Added Tax, Sales Tax or any other statutory tax or levy applicable to this Agreement.

(16) **"Works"** means the activities on a project for which contractors are under contract to the Client to perform or is intended to be performed, including the supply of goods and equipment.

1.2 Interpretation

(1) The headings in the Agreement shall not be used in its interpretation.

(2) The singular includes the plural; the masculine includes the feminine and vice versa where the context requires.

(3) If there is conflict between any of the provisions of the Agreement then the following order of priority shall apply in the interpretation of the parties' obligations: -

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Additional documents specified in the Specific Provisions are:-

3.1 Appendix "A" (Letter of Appointment)

(4) All monetary amounts exclude VAT.

2. OBLIGATIONS OF THE CONSULTING ENGINEER

2.1. Duty of Care.

Demetrius Williams & Associates shall exercise reasonable professional skill, care and diligence in the performance of the services.

2.2. Exercise of Authority.

Where the services include the exercise of powers to certify, decide or exercise discretion in terms of a contract between Setsoto Municipality and any third party, then Demetrius Williams & Associates shall act in accordance with that contract, but as an independent professional acting with reasonable skill, care and diligence.

2.3. Designated Representative.

Demetrius Williams & Associates shall designate in writing a person to act as his representative and such person shall have complete authority to receive instructions and to give information to Setsoto Municipality on behalf of the Consulting Engineer.

2.4. Co-operation with Others.

Demetrius Williams & Associates shall perform any services in conjunction with any other Consulting Engineers or specialists who might be appointed to provide services to any project and Demetrius Williams & Associates may make recommendations to Setsoto Municipality in respect of such appointments for certain parts of the project. Demetrius Williams & Associates shall only be responsible for their own performance and the

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performance of their sub-Consulting Engineers or specialists who have specifically been appointed by Demetrius Williams & Associates to assist with the services.

2.5. Notice of Change.

On becoming aware of any matter which shall materially change or has changed the scope, cost or timing of the services or the works, Demetrius Williams & Associates shall give notice to Setsoto Municipality, save that Demetrius Williams & Associates is empowered to make minor changes or variations within the overall programme or budget and within such parameters as are defined by Setsoto Municipality, provided that such changes are reported timeously to Setsoto Municipality.

2.6. Construction Stage Services.

Demetrius Williams & Associates will monitor any construction to the extent described in Appendix "A". Demetrius Williams & Associates cannot ensure the performance of the contractor nor guarantee against any failure by the Contractor to perform work in accordance with the contract. The provision of construction stage services creates no contractual relationships between Demetrius Williams & Associates and the contractor and Demetrius Williams & Associates has no liability to the contractor in any way arising out of such services.

3. OBLIGATIONS OF THE CLIENT

3.1. Information

Setsoto Municipality shall timeously provide to Demetrius Williams & Associates, free of cost, all information that may be reasonably required for the provision of the services. Demetrius

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Williams & Associates shall be entitled to rely on the accuracy and completeness of such information furnished by or on behalf of Setsoto Municipality.

3.2. Decisions

Setsoto Municipality shall give their decision on all matters, properly referred to them by Demetrius Williams & Associates in writing within a reasonable time so as not to delay the services or the contract.

3.3. Assistance

Setsoto Municipality shall co-operate with Demetrius Williams & Associates and shall not interfere with or obstruct the proper performance of the services. Setsoto Municipality shall as soon as reasonably possible:

(1) Authorize Demetrius Williams & Associates to act as their agent as may be necessary for the performance of the said services.

(2) Provide all available maps, plans, record drawings and other relevant information.

(3) Obtain all approvals, licenses and permits from governmental, regional and municipal authorities having jurisdiction over the project, unless otherwise stated in Appendix "A".

(4) Designate in writing a person to act with their complete authority to give instructions for and to receive information on their behalf.

3.4 Notice of Change

On becoming aware of any matter which materially shall change or has changed the scope, cost or timing of the services or the works, or on becoming aware of any defect or

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deficiencies in the services or the works, Setsoto Municipality shall give appropriate notice to Demetrius Williams & Associates.

3. Issue of Instructions

Where Demetrius Williams & Associates is required to administer the work of others or of any contract on behalf of Setsoto Municipality, then Setsoto Municipality shall only issue instructions related to such work or contract through Demetrius Williams & Associates.

4. DURATION OF AGREEMENT

4.1. Commencement

The appointment of Demetrius Williams & Associates shall commence from the date of the agreement or from the time when Demetrius Williams & Associates began to perform any of the services provided for in this agreement, whichever is the earlier.

4.2. Completion

Unless terminated under one of the other clauses, the appointment of Demetrius Williams & Associates shall be completed whit the submission of the final report or when the closing account is rendered, whichever is the later.

4.3. Force Majeure

If circumstances arise for which Demetrius Williams & Associates is not responsible and which make it impractical or impossible for Demetrius Williams & Associates to perform the services in the normal manner as contemplated by the parties in accordance with the agreement in whole or in part, then Demetrius Williams & Associates shall promptly notify Setsoto Municipality.

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If in those circumstances, certain services have to be suspended, the time for their 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. Setsoto Municipality shall pay to Demetrius Williams & Associates such additional fees and expenses as may be agreed as appropriate to the work undertaken by Demetrius Williams & Associates in providing the necessary additional services.

4.4. Termination by the Client

Setsoto Municipality may suspend all or part of the Services or terminate the agreement by notice to Demetrius Williams & Associates who shall immediately make arrangements to stop the services and minimize further expenditure.

4.5. Termination by the Consulting Engineer

Demetrius Williams & Associates may, by notice of at least 30 days, terminate the agreement, or at their discretion and without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the services:

4.5.1. when, 30 days after the due date for payment of any invoices, Demetrius Williams & Associates has not received payment of that part of it which has not by that time been contested in writing by Setsoto Municipality, or

4.5.2. when the services have been suspended under either Clause 4.3 or 4.4 and the period of suspension has exceeded 6 months , or it is clear to Demetrius Williams & Associates that it will be impossible or impractical to resume the suspended services before the period of suspension has exceeded 6 months , or

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4.5.3. if Setsoto Municipality is in material breach of a term of the agreement and fails to rectify such breach within 14 days of the receipt of written notice requiring them to do so.

4.6. Payment due upon Suspension or Termination

Should instructions having been given by Setsoto Municipality to Demetrius Williams & Associates to proceed with any of the stages of services and the whole or part of the works is cancelled or abandoned or postponed for a period of more than six months, Demetrius Williams & Associates shall be remunerated for services performed, plus a surcharge of one tenth of the full fee which would have been payable to Demetrius Williams & Associates had their services been completed in terms of his engagement.

4.7. Rights and Liabilities of the Parties

Completion, suspension or termination of the agreement shall not prejudice or affect the accrued rights or liabilities of the parties.

5. REMUNERATION - GENERAL

5.1. Payment

The remuneration or method of determining the remuneration to be paid to Demetrius Williams & Associates for providing the Services required in terms of their Agreement and for reimbursement for all expenses and costs incurred in performing the Services shall be in accordance with the following or, in the absence of a specific agreement for the method of determining the method of remuneration, the latest published Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000) as applicable at the time of signature of this Form of Agreement, shall

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be the basis for determining the remuneration subjected to additional or alternative remuneration conditions.

5.2. Time for Payment

Amounts due to Demetrius Williams & Associates shall be paid in full on the agreed dates or within thirty (30) days of the date of issue of any claim. If Demetrius Williams & Associates does not receive payment by the time stated then Demetrius Williams & Associates shall be paid interest at the prevailing prime overdraft rate of their bank plus 2 percentage points per annum compounded monthly calculated from the due date of payment.

5.3. Disputed Invoices

If any item or part of an item in an invoice submitted by Demetrius Williams & Associates is disputed by Setsoto Municipality, Setsoto Municipality shall give notice before the due date of payment with reasons, but shall not delay payment on the remainder of the invoice. Clause 5.2 shall apply to contested amounts which are finally determined to be payable to Demetrius Williams & Associates. Where Setsoto Municipality inadvertently overpays Demetrius Williams & Associates then Demetrius Williams & Associates shall refund excess amount on the same basis as in Clauses 5.2 and 5.3 or to rectify the amount in the subsequent claim.

5.4. Reimbursable Expenses

All expenses necessarily incurred by Demetrius Williams & Associates in connection with the services shall be reimbursed on a monthly basis as an additional charge unless specifically incorporated in the fees and expenses set out in the Specific Provisions.

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6. LIABILITY

6.1. Liability of the Consulting Engineer

Demetrius Williams & Associates shall only be liable to pay compensation to Setsoto Municipality arising out of or in connection with the agreement if a breach of Clause 2.1 is established against them.

6.2. Liability of the Client

Setsoto Municipality shall be liable to Demetrius Williams & Associates arising out of or in connection with this agreement if a breach of an obligation in terms of this agreement is established. Demetrius Williams & Associates shall have no separate delictual right of action against Setsoto Municipality.

6.3. Compensation

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

6.3.1. Such compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of such breach.

6.3.2. The compensation payable by either party shall be reduced by the court / arbitrator / mediator to such extent as is deemed just and equitable having regard to the degree in which the other party or any third party was at fault in relation to the loss or damage. The liability of the parties is not joint and each party shall only be liable for that proportion of the compensation, which is attributable to their fault.

6.3.3. In any event, the amount of such compensation will be limited to the amount specified in Clause 6.5.

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6.4. Duration of Liability

Not withstanding the terms of the Prescription Act No 68 of 1969 (as amended) or any other applicable statute of limitation neither Setsoto Municipality nor Demetrius Williams & Associates shall be held liable for any loss or damage resulting from any occurrence unless a claim is made in terms of Clause 8 within the period stated in the Specific Provisions, or, where no such period is stated, within a period of three years from the date of termination or completion of this agreement.

6.5. Limit of Compensation

The maximum amount of compensation payable by either party to the other in respect of liability under this agreement is limited to an amount equal to twice the amount of fees payable to Demetrius Williams & Associates under this agreement, excluding reimbursements and expenses unless otherwise stated.

Each party agrees to waive all claims against the other in so far as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

If either party makes a claim for compensation against the other party and this is not established, the claimant shall reimburse the other for their reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of clause 8 for such costs as may be awarded.

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6.6. Insurance for Liability and Indemnity

Demetrius Williams & Associates agrees to arrange and maintain professional indemnity insurance cover in respect of the services provided under this agreement for the duration of the liability period in terms of clause 6.4.

6.7. Indemnity by the Client

Setsoto Municipality shall indemnify Demetrius Williams & Associates against all claims by third parties which arise out of or in connection with the rendition of the services save to the extent that such claims do not in the aggregate exceed the limit of compensation in clause 6.5 or are covered by the insurance's arranged.

6.8. Exceptions

Clauses 6.5 and 6.7 shall not apply to claims arising from deliberate misconduct.

6.9. Rights of Recourse

Notwithstanding the provisions of clauses 2.1, 2.6 and 6.1 of the Conditions of agreement and any other contractual duty imposed on Demetrius Williams & Associates in terms of contract documents , Setsoto Municipality undertakes to exhaust all its contractual remedies against the contractor, before exercising any contractual rights of recourse it may have against Demetrius Williams & Associates in the event of Setsoto Municipality suffering any damages as a result of any breach by the Contractor of his obligations in terms of the contract documents.

7. GENERAL PROVISIONS

7.1. Governing Law

This agreement shall be governed by the law of the Republic of South Africa.

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7.2. Changes in Legislation

If, after the date of the agreement, the cost or duration of the services is altered as 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.

7.3. Assignments and Sub-Contracts

7.3.1. Should Demetrius Williams & Associates, being an individual or the last survivor of the partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by this agreement, this agreement shall be terminated without prejudice to the accrued rights of either party against the other.

7.3.2. Except as defined in (1) above, each party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect of all obligations and liabilities of this agreement.

7.3.3. Demetrius Williams & Associates shall not without the written consent of Setsoto Municipality, which consent shall not be unreasonably withheld, initiate, or terminate any sub-contract for performance of all or part of the services.

7.4. Ownership of Data, Designs and Documents

7.4.1. In accordance with the relevant clauses of the Copyright Act (Act 98 of 1978) relating to assignment, Demetrius Williams & Associates shall retain copyright of all

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documents prepared by Demetrius Williams & Associates. Setsoto Municipality 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 Demetrius Williams & Associates' permission to copy for such use;

7.4.2. The ownership of data and factual information collected by Demetrius Williams & Associates and paid for by Setsoto Municipality shall, after payment by Setsoto Municipality, lie with Setsoto Municipality;

7.4.3. Setsoto Municipality shall have no right to use any documents referred to in this Clause where any or all of the fees and expenses payable to Demetrius Williams & Associates have not been paid in accordance with this agreement.

7.4.4. In the event that the parties agree that the copyright in the documents shall be ceded to Setsoto Municipality, then Demetrius Williams & Associates shall not be liable in any way for the use of any of the information other than as originally intended for the project and Setsoto Municipality hereby indemnifies Demetrius Williams & Associates against any claim which may be made against them by any party arising from the use of such documentation for other purposes.

7.5. Conflict of Interest and Corruption

Unless otherwise agreed in writing by Setsoto Municipality, Demetrius Williams & Associates and their personnel shall have no interest in nor receive remuneration in connection with the project except as provided for in the agreement. Demetrius Williams & Associates shall not engage in any activity, which may be in conflict with the interests of Setsoto Municipality under this agreement.

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Notwithstanding any damages that may be claimed against Demetrius Williams & Associates in law, Setsoto Municipality will be entitled to terminate the agreement in accordance with Clause 4.4, if it is shown that Demetrius Williams & Associates is guilty of:

7.5.1. offering, giving, receiving or soliciting anything of value with a view to influencing the behavior or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the agreement; or

7.5.2. Misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of Setsoto Municipality, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.

7.6. Notices

Notices under the agreement shall be in writing and will take effect from receipt at the physical address stated. Delivery may be by registered letter or by hand against written confirmation of receipt or by facsimile or e-mail.

7.7. Publicity and Publication

Unless otherwise specified, Demetrius Williams & Associates 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 the written approval of Setsoto Municipality, which approval by Setsoto Municipality shall not be unreasonably withheld. Setsoto Municipality shall not make premeditated public or media statements relating to the services provided by Demetrius Williams & Associates without the prior and full knowledge and approval of Demetrius Williams & Associates.

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7.8. Confidentiality

Both parties shall keep all commercially sensitive information obtained by them in the context of the agreement confidential and shall not divulge it without the written approval of the other party.

7.9. Variations

7.9.1. Setsoto Municipality may order variations to the services in writing or may request Demetrius Williams & Associates to submit proposals, including the time and cost implications, for variations to the services;

7.9.2. The reasonable cost of preparation and submission of such proposals and the incorporation into the agreement of any variations to the services ordered by Setsoto Municipality, including any increase in Demetrius Williams & Associates' fees and reimbursable costs, shall be agreed between Demetrius Williams & Associates and the Setsoto Municipality.

7.10. Sole Agreement

This agreement together with any attachments and appendices detailed in the agreement 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 as expressly intended to form part of the agreement.

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8. SETTLEMENT OF DISPUTES

8.1. Settlement

The parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to this agreement and may not initiate any further proceedings until either party has, by written notice to the other, declared that such negotiations have failed.

8.2. Mediation

Any such dispute or claim, which cannot be settled between the parties, may be referred by the parties, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the parties and, failing such agreement, shall be nominated by the President of the South African Association of Consulting Engineers. The costs of the mediation shall be borne equally between the parties.

8.3. Arbitration/Litigation

If either party were unwilling to agree to mediation or be dissatisfied with the opinion expressed by the mediator or should the mediation fail then such party may: -

8.3.1. Serve process instituting action arising out of such dispute or difference in a competent civil court; or

8.3.2. With the consent of the other party refer the dispute to arbitration by a single arbitrator to be mutually agreed upon or, failing agreement, to be nominated by the President of the South African Association of Consulting Engineers. 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,

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failing such agreement, in accordance with the Rules for the Conduct of Arbitration's published by the Association of Arbitrators current at the date the arbitrator is appointed.

8.3.3. Service of process under Clause 8.3.1 or referral to arbitration under Clause 8.3.2 shall take place within three calendar months of the date of notice from either party declaring that the settlement negotiations under Clause 8.1 have failed, or, if mediation is agreed on, within three calendar months 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.

Signed at Ficksburg on this day of 4th May 2011

Signed at Ficksburg on this day of 4th May 2011

Setsoto Municipality:

Name: B. J. MTHEMBU

Signature:

Demetrius Williams & Associates:

Name: DEMETRIUS Williams

Signature:

As Witness:

Name:

Signature:

As Witness:

Name: MAHLABA TAMKISO P.

Signature:

M.T.P.

ANNEXURE A

SETSOTO

Head Office
P O Box 116
27 Voortrekker Street
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9730
Tel: (051) 933 9300
Fax: (086) 536 1643

LOCAL MUNICIPALITY
PLAASLIKE MUNICIPALIEIT
MASEPALA WA LEHAE
DPT.: MUNICIPAL MANAGER
P O Box 116
FICKSBURG
9730
Tel: (051) 933 9302
Fax: (051) 933 9363
E-mail:bmthembu@setsoto.co.za

All correspondence addressed to Head Office /Alle korrespondensie gerig te word aan Hoofkantoor / Mangolo ohle a lebiswe Ntlokgolo.

Enquiries: B.J. Mthembu	**OUR REF:**MIG/FS0766/R,ST/09/10)

06 August 2010

The Director
Demetrius Williams & Associates
P.O. Box 2063
BETHLEHEM
9701

For Attention: Mr. Demetrius Williams

Dear Sir

APPOINTMENT: UPGRADING OF PAVED ROADS AND STORM WATER DRAINAGE IN CLOCOLAN/HLOHLOLWANE

You are hereby appointed on the above mentioned project for the compilation of business plans, design, and application for funding, documentation and project management.

The appointment is on risk for a period of five (5) years and subject to renewal. In the event that there is funding obtained, a Service Level Agreement (SLA) will be signed between the two parties.

Yours faithfully

.....Mthembu.
B.J. MTHEMBU
Municipal Manager

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18. Aug. 2010 15:12 No. 2842 P. 2/2

SETSOTO
Head Office
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9730
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LOCAL MUNICIPALITY
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Tel: (051) 933 9302
Fax: (051) 933 9363
E-mail:bmthembu@setsoto.co.za

All correspondence addressed to Head Office /Alle korrespondensie gerig te word aan Hoofkantoor / Mangolo ohle a lebiswe Ntlokgolo.

Enquiries: B.J. Mthembu

OUR REF:MIG/FS0766/R,ST/09/10)

06 August 2010

The Director
Demetrius Williams & Associates
P.O. Box 2063
BETHLEHEM
9701

Dear Sir

APPOINTMENT: THE DESIGN AND SUPERVISION OF CONSTRUCTION OF THE UPGRADING OF 2.1 km PAVED ROAD AND STORM WATER DRAINAGE IN CLOCOLAN/HLOHLOLWANE

1. This letter serves to notify you that your company has been appointed by the Setsoto Local Municipality for the above stated project which is for the design and supervision of the construction of the 2.1 km Paved Road and Storm Water Drainage in Clocolan/Hlohlolwane.
2. Your appointment is based on the ECSA normal duties and fee guidelines.
3. Prior to the commencement of any works, the Setsoto local Municipality requires that a contract agreement/service level agreement (SLA) based on the CIDB/ECSA format be entered into between the Setsoto Local Municipality and your company. You are therefore requested to submit a draft contract agreement for our perusal and approval. Your professional insurance must also be submitted with the contract agreement.
4. In addition, you will submit your proposed project programme covering the period for preliminary design, tender process, final design and construction. You will note that the Municipality needs to approve every milestone stage of the project before you can proceed to the next stage.
5. We suggest that you organize a project take-off meeting between the municipality and your company to discuss the above matters.

Yours faithfully

B.J. MTHEMBU
Municipal Manager

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Re sebeletsa katleho

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2010

[illegible]

[illegible] Associates

[illegible]

[illegible]

PI FINANCIAL RISK SERVICES (PTY) LTD

C/O JOHAN LINGERFELDER BROKERS

P O BOX 324
BETHLEHEM
9700

Attention: MR C JANEKE

2 MARCH 2011

PROFESSIONAL INDEMNITY INSURANCE – LHL CONSULTING ENGINEERS/MAISHA DEVELOPMENT ENGINEERS / MPSH ENGINEERS

Attached herewith is your policy documentation in respect of your Professional Indemnity Insurance renewal.

We strongly recommend that you read through your policy documentation and ensure that we have bound your cover in accordance with your instructions. You will also note the correct claims procedures in the event of a claim or possible circumstance. Should you note any discrepancies in the policy, in terms of your instructions, kindly advise us urgently, so that we may effect amendments/corrections. Should you wish to discuss, or require clarification on, any sections of the policy, kindly feel free to contact us and we will assist you.

The policy is written on a "Claims Made" basis. In order to trigger coverage, claims must first be made against you during the Policy or any Extended Reporting Period (if applicable). The act(s) which lead to the Claim must have occurred after the retroactive date and prior to the expiration of the Policy. Furthermore, such Claims must be reported by you to us immediately you become aware of them.

Please be aware that late reporting could result in a disclaimer of coverage from the Insurer.

We have also attached your tax invoice for record purposes as we have already sent you payment details on our earlier correspondence.

We look forward to continuing our past relationship and in the event of there being any queries, please do not hesitate to contact the writer.

Yours Sincerely,

BRENDA RHYNES
Client Executive
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2011 -03- 15

Manwood Underwriters
(Pty) Limited

25596

PROFESSIONAL INDEMNITY INSURANCE POLICY

for

LHL Consulting Engineers
Maisha Development Engineers
MPSH Engineers

arranged by

PI Financial Risk Services (Pty) Ltd
PO Box 70338
Bryanston
Gauteng
2021
Tel No: (011) 540-7913 Fax No: (011) 463-8591

underwritten by

MANWOOD UNDERWRITERS (PTY) LTD
Postnet Suite 31
Pvt Bag x75,
Bryanston
2021
Tel 011-540-7900
Fax 011-540-7920
e-mail: cwatson@manwood.co.za

on behalf of

Centriq Insurance Company Ltd
4 Fricker Road,
Illovo Boulevard
2196
Tel 011-268-6490
Fax 011-268-6495
Compliance Officer: E. Pistorious 011-268-6490

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Manwood Underwriters
(Pty) Limited

Professional Indemnity Insurance

SCHEDULE

Policy Number	PI/10/7530
Broker	PI Financial Risk Services (Pty) Ltd
The Insured	LHL Consulting Engineers Maisha Development Engineers MPSH Engineers
Address	40 Lindley Street, Bethlehem Freestate 9701
The Insured's Business	Civil & Structural Engineers
The Period of Insurance	**From:** 01 March 2011 **To:** 29 February 2012
The Retroactive Date	01 March 2002
The Date of Proposal	16 February 2011

The Limit of Indemnity	**The Excess**
R2,000,000 each and every claim	R25,000.00 each and every claim

The Premium	R32,011.20	Inclusive of V.A.T.
Security	100%	Centriq Insurance Company Ltd
Date	24 February 2011	

Company Registration Number 1998/018534/07
Rosewill House, 35 Old Kilcullen Road, Bryanston Gauteng 2191
FSB Licence Number 1029
PostNet Suite #31 Pvt Bag x75 Bryanston 2021
Tel Number 011-540-7900 Fax Number 011-540-7920 e-mail: cwatson@manwood.co.za Website: www.manwood.co.za
Directors: CBG Watson*(Managing)*British CJS Hummel

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PROFESSIONAL INDEMNITY INSURANCE FOR CONSULTING ENGINEERS, QUANTITY & LAND SURVEYORS and PROJECT MANAGERS

This Policy, the Schedule and any endorsements attached hereto, shall be considered one document and any word or expression to which a specific meaning has been attached in any of them, shall bear such meaning throughout.

1. **PREAMBLE**

The Insured having made a written proposal to Insurers, dated as stated in the Schedule, and/or otherwise submitted particulars and statements constituting the risk profile, which proposal and/or risk profile shall form the basis of this insurance, the Insurers will indemnify the Insured in accordance with the terms, exclusions, conditions and limitations contained herein or endorsed hereon.

2. **INSURING CLAUSE**

The indemnity granted by this Policy applies to all claims first made against the Insured during the Period of Insurance and notified to Insurers no later than 30 days after expiry (subject always to **condition 8.1**) and in respect of which the Insured shall become legally liable to pay compensation, including claimants' costs, fees and expenses, arising out of any actual or alleged (other than by the Insured) negligent act, error or omission in the execution and conduct of the professional activities and duties undertaken by the Insured in the conduct of the business/Profession.

3. **DEFENCE COSTS**

The Insurers will pay all costs, fees and expenses incurred with the prior consent of the Insurers in the investigation, defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured, provided such claim or claims are the subject of indemnity by this Policy.

4. **LIMIT OF INDEMNITY**

The total of the Insurers liability, in respect of all claims under this Policy, including all claimants' costs, fees and expenses, Defence Costs and value added tax, shall not exceed the **Limit of Indemnity** stated in the Schedule.

5. **DEFINITIONS**

For the purpose of this insurance:

5.1 **"The Insured"** shall include:

a) the Company, Partnership or Person named in the Schedule hereinafter referred to as the Insured
b) any present (including appointments made during the Period of Insurance) or former Director, Partner, Principal or "In-house" Consultant of the Insured:
c) at the request of the Directors, Partners or Principals of the Insured, any present or former Employee of the Insured;
d) any predecessors of the Insured but only to the extent that liability attaches to the Insured;
e) in the event of the death, incapacity, insolvency or bankruptcy of any person treated as the Insured (in respect of claims against such person) his estate, legal representatives and/or heirs.

5.2 **"Professional activities and duties"** shall mean those duties of a professional nature which the Insured advertise as their usual business, for which they are qualified by relevant examination or experience and as stated as the Business/Profession in the Schedule.

5.3 **"Documents"** shall mean bonds, debentures, scrip certificates, deposit receipts, transfers, coupons, warrants, bills of exchange, promissory notes, title deeds, powers of attorney, deeds, wills, agreements, maps, plans, records (whether on paper, microfilm, magnetic tape or disc) and written and printed documents and forms of any nature, belonging to the Insured or for which the Insured is responsible in connection with the Business/Profession.

5.4 **"Excess"** shall mean that first part of each and every claim to be borne by the Insured, it being understood and agreed that if any expenditure is incurred by the Insurers which, by virtue of the **Excess**, is the responsibility of the Insured, then such expenditure shall be reimbursed by the Insured.
For the purpose of the **Excess**, all losses and/or claims arising out of one act, error or omission shall be deemed to arise out of one event or occurrence.

5.5 **"In The Aggregate"**
Where this term appears it shall mean: the maximum amount payable in respect of all claims made during the period of insurance shall not exceed in the aggregate, the **limit of indemnity** specified in the Schedule.

5.6 **"Any One Claim/Each and Every Claim"** shall mean;
all Claims, regardless of their number or the identity of the claimants or whether attributable to separate contracts or mandates arising from or out of,

a) the same negligent act error omission misrepresentation misstatement breach or infringement,
b) one originating defamatory statement or utterance,
c) an originating cause of destruction loss mislaying of or damage due to theft or access of Third Party Documents and Property,

shall be regarded as one **Claim** under this contract.

5.7 **"Claim"** or **"Claims"** shall mean;

a) the receipt of a letter, a summons or other document, howsoever delivered, claiming Damages from The Insured,
b) the receipt of a notice from any person or entity of any intention to claim Damages from The Insured,
c) a Circumstance which shall mean;
   c.i the knowledge of facts from which The Insured ought reasonably to conclude that a Claim may be made against The Insured,
   c.ii the identification or instance of destruction, loss, mislaying of or damage to Documents or Property.

5.8 **"Value Added Tax"** shall mean;
the applicable tax applied to goods and services in terms of Act, No 89 of 1991.

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6. EXCLUSIONS

The Insurers shall not be liable to indemnify the Insured in respect of claims:

6.1 Arising out of the death of or bodily injury to or illness or disease sustained by any person under a contract of employment or apprenticeship with the Insured where such death, injury, illness or disease arises out of the execution of such contract.

6.2 For the cost of replacing or restoring Documents.

6.3 Arising out of any property manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured.

6.4 Arising out of the activities of the Insured as a building or civil engineering contractor, whether or not such activities are carried out in conjunction with the Business/Profession.

6.5 Arising out of:

a) loss of money (including postal and money orders and Kruger Rands);

b) theft or forgery of cheques and other negotiable documents of title

6.6 Arising out of defamation and/or injuria.

6.7 Arising out of any dishonest, malicious, criminal or illegal act or omission.

6.8 Arising out of any liquidated damages or penalty clauses or any performance warranties (express or implied) except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties.

6.9 For fines, penalties or punitive or exemplary damages other than in the case of a claim admissible in terms of the **Insuring Clause 2.**

6.10 Arising out of the insolvency of the Insured.

6.11 Arising out of the failure to arrange finance.

6.12 Arising out of the failure to effect or maintain insurance.

6.13 Arising out of the provision of cost estimates other than such costs estimates undertaken by suitably qualified personnel.

6.14 In respect of which the Insured is entitled to indemnity under any other policy or policies, and this shall not be called into contribution with such other policy or policies.

6.15 Made against the Insured by any Holding Company, Subsidiary Company or Associated Company of the Insured or by any person or entity having financial or executive interest in the Insured, unless such claim or claims emanate directly from an independent third party.

6.16 Arising out of any negligent act, error or omission, or other risk insured under this Policy, committed or occurring prior to the Retroactive Date stated in the Schedule.

6.17 Directly or indirectly caused by or arising from or in consequence of or contributed to by nuclear weapons material or by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

6.18 For any award or damages granted in terms of a judgement delivered or obtained in the first instance in the United States of America, Canada or Australia.

6.19 For costs, fees and expenses of litigation which are incurred in the United States of America, Canada and/or Australia.

6.20 Arising out of the conduct of the Business/Profession in the United States of America, Canada and/or Australia.

6.21 Arising out of any claim or circumstance, which has been or should have been notified under any other policy or certificate of insurance attaching prior to the inception of this Policy.

6.22 Arising out of bodily injury, sickness, disease, or death sustained by any person or any loss, damage or destruction of property unless such claim emanates from negligent advice, design, specification, formula or a breach of duty owed in a professional capacity by the Insured.

7 EXTENSIONS

The following Extensions are deemed to apply:-

PROVIDED ALWAYS THAT, in respect of all Extensions, the total liability of the Insurers is not increased beyond that which would have applied in the absence of such Extensions.

7.1 **Defamation/Injuria**

Notwithstanding anything to the contrary in **Exclusion 6.6**, the indemnity granted by this Policy extends to include claims arising out of defamatory statements, whether written or verbal, made by the Insured in the conduct of the Business.

PROVIDED ALWAYS THAT no indemnity shall be granted in respect of claims arising from any publication in any journal, magazine and/or newspaper and/or on radio and/or television.

7.2 **Dishonesty of Employees**

Notwithstanding anything to the contrary in **Exclusion 6.7**, the indemnity granted by this Policy extends to include claims arising out of any dishonest or malicious act or omission of any Employee (not being a Director, Partner or Principal) of the Insured.

PROVIDED ALWAYS THAT:

a) the Insurers shall not be liable to indemnify the Insured in respect of claims arising out of the dishonest or malicious act or omission of any Employee after the discovery or reasonable suspicion of any such act or omission on the part of the same Employee which has given or may give rise to a claim under this Extension.

b) any claim under this Extension arising out of the collusion of two or more Employees shall be deemed to be one claim.

c) no indemnity shall be granted in respect of claims, which are Insurable under a Fidelity Guarantee Policy of Insurance.

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7.3 **Sub-Contracted Duties**

In the event of the Insured sub-letting any part of the professional activities and duties necessary to carry out the Business/Profession, the Insured will continue to be indemnified in accordance with the terms, Exclusions, Conditions and limitations of this Policy:

PROVIDED ALWAYS THAT:

a) such activities and duties shall only be sub-let to suitably qualified firms, persons or parties;
b) the Insured shall have taken all reasonable steps prior to and during the continuance of such sub-letting to ensure that such firms, persons or parties have effected and will maintain adequate Professional Indemnity Insurance;
c) the Insured shall at all times retain all rights of recourse against such firms, persons or parties and will give all reasonable assistance to the Insurers in effecting such rights.

In the event of the Insurers alleging that the Insured is not entitled to indemnity under these provisions by virtue of any breach thereof, the onus of proving the contrary shall rest with the Insured.

7.4 **Fee Recovery**

The Insurers will indemnify the Insured against all-legal costs, fees and expenses incurred by the Insured in connection with legal proceedings instituted by the Insured during the Period of Insurance for the recovery of professional fees due to the Insured subject to the following conditions:

a) Prior to instituting any proceedings:
   i. the Insured must inform Insurers of their intention to institute such proceedings;
   ii. Insurers must be advised by their legal advisers that such proceedings could be pursued with a reasonable prospect of success;
   iii. the proceedings must be capable of a counter claim being mounted from the other party as could be envisaged under the main provisions of the policy.

   Insurer's liability is limited to 80% of all costs incurred subject to a maximum liability of 10% of the **Limit of Indemnity** stated in the Schedule or **R250,000** whichever is the lesser.
b) no claim under this section shall attach in respect of any fees which have come due, or any part of which has become due prior to the commencing date of this policy or the commencing date of any policy for which this policy is a replacement.
c) Notice of intention to institute proceedings (under this clause) must be given to Insurers within twelve months of the date upon which such fees became due.
d) The Insured shall be responsible for the amount of the **Excess** stated in the Schedule before the Indemnity granted by this extension shall apply.

7.5 **Loss of Documents**

Notwithstanding anything to the contrary contained in Exclusion 6.2, the indemnity granted by this Policy extends to include all costs and expenses, up to **R25,000** in all, in excess of **R250.00** each and every claim, incurred by the Insured with the written consent of the Insurers in the replacement or restoration of any Documents following loss or damage to such Documents (including distortion or accidental erasure of computer systems records) discovered during the Period of Insurance.

7.6 Infringement of Copyright

In the event of the prosecution of any injunction and/or proceedings for compensation arising out of infringement of any copyright vested in the Insured, the Insurers will indemnify the Insured in respect of reasonable and necessary costs and expenses first incurred during the period of Insurance stated in the Schedule by the Insured, with the prior written consent of Insurers.

Provided that any such prosecution arises out of the conduct of the Business.

Subject always to **Item 4 Limit Of Indemnity** of this policy.

8 **CONDITIONS**

8.1 The Insured shall give written notice to the Insurers as soon as practicable of any claim made against the Insured (or of any specific event or circumstance which may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Insurers require.

8.2 Every claim, writ, summons or process and all documents relating to the claim event or circumstance shall be forwarded to the Insurers immediately they are received by the Insured.

8.3 If, during the Period of Insurance, the Insured shall give notice to the Insurers in accordance with **Condition 8.1** of this Policy of any event or circumstance which the Insurers accept may give rise to a claim being made against the Insured, then such claim shall for the purposes of this Policy be treated as having first been made against the Insured during the Period of Insurance.

8.4 No admission, offer, promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Insurers who, if they so wish, shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any claim or to prosecute in the name of the insured, but for the benefit of the Insurers, any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Insurers may reasonably require.

8.5 The Insured shall give notice as soon as reasonably possible of any fact, event or circumstance which materially changes the information supplied to the Insurers at the time when this Policy was effected, and the Insurers may amend the terms of this Policy according to the materiality of such change.

8.6 The Insurers may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which an Indemnity Limit applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Insurers shall relinquish the conduct and control of and be under no further liability in connection with such claims.

8.7 The interpretation of the terms and Exclusions of this Policy (and any phrase or word contained therein) shall be in accordance with the law of the Republic of South Africa.

8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance, shall declare to the Insurers as soon as possible such details as the Insurers require. The premium shall then be adjusted and any difference paid by or allowed to the Insured, as the case may be, subject to any minimum premium that may apply.

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8.9 If indemnity is sought under this Policy by any fraudulent means all benefit in respect of such claim shall be forfeited;

8.10 Insurers may cancel the Policy with immediate effect by notice in writing to the last known address of the Insured.

8.11 If the **Limit of Indemnity** is increased during the Period of Insurance then the lower **Limit of Indemnity** shall apply to all claims made to circumstances notified or required to have been notified to the Insurers prior to such increase in the **Limit of Indemnity**. Unless otherwise stated the Retroactive date for the new **Limit of Indemnity** shall be the effective date thereof.

8.12 In the event of non payment of the premium stated in the Schedule, Insurers may terminate the Policy from inception and will not be liable for any claims made against the Insured, whether the claim or claims have been notified to Insurers or not.

8.13 Wherever this Policy provides notice to be given to the Insurers, such notice shall be given to:
MANWOOD UNDERWRITERS (PTY) LTD:
Rosewill House, 35 Old Kilcullen Road, Bryanston, 2194 - Postnet Suite #31 Private Bag X75, Bryanston, 2021.
Tel: (011) 540 -7900 Fax No: (011) 540 -7920.

9 DUE OBSERVANCE CONDITION

The due observance and fulfilment of the terms and conditions of this Policy by the Insured, insofar as they relate to anything to be done or complied with by the Insured, shall be conditions precedent to any liability of the Insurers to make any payment under this Policy.

COMPUTER LOSS GENERAL EXCLUSION

Notwithstanding any provision of this policy or any exclusions, extensions, endorsements or anything which may otherwise override anything stated in this policy, this policy shall not indemnify the Insured in respect of any claim, loss, liability, costs or expenses directly or indirectly caused by or contributed to or arising from or in connection with the failure or incapacity of any Computer System, whether or not the property of the Insured, correctly or at all,

i. to treat any date as correct or true or correctly indentify, manipulate, interpret, process, store, retrieve, respond to or perform any command or instruction in regard to any such date or

ii. arising as a result of any computer virus or other corrupting harmful or unauthorised code or instruction including any trojan, time or logic bomb or worm or any other destructive code, media or program or interference.

"Computer System" shall mean any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers) firmware or macrocode.

WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

2. any act of terrorism which shall mean an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear

3. any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.
If any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

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