

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**SERVICE CONTRACT FOR THE AS AND WHEN MAINTENANCE, SUPPLY,  
SERVICE, REPAIR AND REPLACEMENT OF SUBSTATION AND ASSOCIATED  
EQUIPMENT WITHIN THE WESTERN CAPE**

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CONTRACT NUMBER :

CONTRACTOR :

NATURE OF WORK : APPOINTMENT OF CONTRACTOR TO PROVIDE AS  
AND WHEN MAINTENANCE, SERVICING AND  
REPAIR FOR 11KV AC, 33kV AC and 3kV DC OHTE.

LOCALITY OR PLACE : PRASA WESTERN CAPE

DATE OF ACCEPTANCE

OF TENDER :

DATE OF COMMENCEMENT

OF TENDER :

DATE OF COMPLETION

DUE :

CONTRACT PRICE :

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## 1 DEFINITIONS AND INTERPRETATIONS

1.1 In this contract (as hereinafter defined) the following words, definitions and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

1.1.1 **“Applicable Laws”** means the Constitution of the Republic of South Africa, Act No.108 of 1996, and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;

1.1.2 **“Bill of Quantities”** means the bill of quantities submitted by the Contractor as part of the Contractor’s Bid;

1.1.3 **“BBBEE”** means Broad Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act No.53 of 2003;

1.1.4 **“BBBEE Status”** means the composition, ownership, make up, level and any other criterion of measurement of BBBEE as indicated in the RFT;

1.1.5 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa, within the meaning of the Public Holidays Act, 1994;

1.1.6 **“Chief Executive Officer”** means (i) the chief executive officer of the Contractor and (ii) the chief executive officer of PRASA Technical, a division of the Employer;

1.1.7 **“Chief Procurement Officer”** means the chief procurement officer of the Employers ;

1.1.8 **“Commencement Date”** means the Business Day following the date on which the Condition Precedent is fulfilled;

1.1.9 **“Condition Precedent”** means the condition precedent in clause 5.1;

1.1.10 **“Construction Equipment”** means all appliances or things of whatsoever nature required in or for the execution, correction of defects, or completion of the Services but does not include materials, Plant or other things that are

part of, or intended to form part of the Permanent Services;

1.1.11 **“Contract”** means this contract and all Annexures thereto;

1.1.12 **“Contractor”** means \_\_\_\_\_;

1.1.13 **“Contractor’s Default”** means any of the following events or circumstances -

1.1.13.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 2008) being entered into by or in relation to the Contractor;

1.1.13.2 a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any, winding-up, execution or other process being levied or enforced upon the whole or any material part of the assets of the Contractor.

1.1.13.3 the Contractor ceases to carry on business; and

1.1.13.4 the Contractor commits a breach of any of its material obligations under this Contract.

1.1.14 **“Contractor’s Bid”** means the documents submitted by the Contractor to the Employer in response to the RFT or Request for Quotation which is attached hereto as Annexure “E” to this Contract;

1.1.15 **“Contract Sum”** means the amount set out in clause 29.2 payable by the Employer to the Contractor in terms of this Contract, subject to such addition thereto or deduction therefrom as may be made from time to time under the provisions of the Contract;

1.1.16 **“Contract Period”** means a period of \_\_\_\_\_, being the period agreed between the Parties for the Contractor to complete the Services, beginning on the Commencement Date;

1.1.17 **“Consents”** mean shall mean all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, permissions required to be issued by or made with any Responsible Authority in connection with the performance of the Works;

- 1.1.18            **“Drawings”** means the plans, technical diagrams and drawings provided by the Employer to the Contractor from time to time to enable the Contractor to render the Services;
- 1.1.19            **“Day”** means a calendar day;
- 1.1.20            **“Employer”** means the Passenger Rail Agency of South Africa, a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 and the legal successors in title thereto;
- 1.1.21            **“Employer’s Default”** occurs if - PRASA fails to make the payment in accordance with the provisions of clause 29 PRASA commits a breach of any material term of this Contract.
- 1.1.22            **“Final Approval Certificate”** means the final approval certificate to be issued by the Employer on completion of the Service by the Contractor;
- 1.1.23            **“Good Industry Practice”** means applying, in relation to the manner in which the Services are performed and the services rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances, irrespective of whether or not it is conducted by or on behalf of an organ of state or the private sector;
- 1.1.24            **“Group Chief Executive Officer”** means **the** group chief executive officer of the Employer;
- 1.1.25            **“Mobilisation Fee”** means an amount equal to 10% of the Contract Price payable to the Contractor by the Employer, as an upfront payment in accordance with clause 29.4 of this Contract;
- 1.1.26            **“Occupational Health and Safety Act”** means the Occupational Health and Safety Act 85 of 1993;
- 1.1.27            **“Option”** means the Employers Option as **indicated** in clause 11 of this Contract;
- 1.1.28            **“Performance Bond”** means an unconditional and on demand bank

guarantee to the value of 10% of the Contract Price as **indicated** pursuant to clause 29.5, to be issued by a South African registered bank in favour of the Employer, substantially in the form set out in the RFT or Request of Quotation;

- 1.1.29        “**Party**” means the Contractor and the **Employer**, collectively referred to as the “Parties”;
- 1.1.30        “**Permanent Services**” means the Services provided by the Contractor and approved by the Employer through issue of the **Final** Approval Certificate;
- 1.1.31        “**Project**” means the programmed and **non**-programmed service work to be undertaken by the Contractor in terms of the provisions of this Contract;
- 1.1.32        “**Project Manager**” means the person appointed by the Employer to be the project manager for the Project, it being **agreed** that the Employer shall procure that such project manager discharges the duties, functions and responsibilities required of it in terms of this Contract;
- 1.1.33        “**Plant**” means machinery, apparatus, articles and things of all kind that become part of the Permanent Services to be provided in accordance with the Contract;
- 1.1.34        “**Restricted Enterprise**” means an entity **restricted** from contracting with the Employer or any other public entity as a result of being listed either on the register for tender defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act 12, of 2004; or any other relevant Applicable Law;
- 1.1.35        “**Request for Tender**” or “**RFT**” means the request for tender issued by the Employer for the appointment of a **Contractor** for the Project, as set out in Annexure “E” to this Contract;
- 1.1.36        “**Request for Quotation**” means the request **for** quotation issued by the Employer for the appointment of a Contractor for the Project, as set out in Annexure “E” to this Contract;
- 1.1.37        “**Responsible Authority**” shall mean any ministry, any minister, any organ of state, any official, any official in the public administration or any other governmental or regulatory Employer, **commission**, entity, service utility,



board of directors, committee, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;

- 1.1.38        **“Scope of Services”** means the Services which are to be provided by the Contractor to the Employer in terms of the terms **and** conditions of this Contract;
- 1.1.39        **“Services”** means the services to be provided **by** the Contractor in terms of this Contract in connection with the Project, as set out in Annexure “B” of this Contract;
- 1.1.40        **“Service Levels”** means the Service levels set out in clause 10;
- 1.1.41        **“Signature Date”** means the date of **signature** of this Contract by the last Party signing;
- 1.1.42        **“South Africa”** means the Republic of **South** Africa;
- 1.1.43        **“Subcontractors”** means any person named in the Contract as a subcontractor as listed in Annexure “C” of this Contract and the legal successors in title to each of these persons;
- 1.1.44        **“Temporary Services”** means the **Services** provided by the Contractor but not approved by the Employer through issue of the Final Approval Certificate;
- 1.1.45        **“Writing”** means any hand-written typed or printed communication including facsimiles, electronic communication or any similar communication resulting in a permanent record. The terms “in writing” and “written” shall have corresponding meanings;
- 1.1.46        **“Work”** means all works to be undertaken **for** the Services in this Contract.

## **2     INTERPRETATIONS**

- 2.1            This Contract shall be interpreted according to the following provisions, unless the context requires otherwise -
  - 2.1.1           references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such

amendment, re-enactment or **consolidation** applies or is capable of applying to any transaction entered into under this Contract;

- 2.1.2 references to “Month” shall be to a calendar month;
- 2.1.3 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Contract, their respective cessionaries and assignees;
- 2.1.4 references to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;
- 2.1.5 references to any “Responsible Authority” or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;
- 2.1.6 references to “clauses”, “sub-clauses” and “Schedules” are references to the clauses, sub-clauses and Annexures of this Contract;
- 2.1.7 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Contract;
- 2.1.8 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Contract, and agree that no provision or word used in this Contract shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Contract or any part of it;
- 2.1.9 words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;
- 2.1.10 references to “this Contract” shall include this Contract as amended, varied, novated or substituted in Writing from time to time;
- 2.1.11 any reference to any enactment, order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re-enacted or replaced from time to time; and

- 2.1.12 when any number of days is prescribed in this Contract, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day.
- 2.2 The common or statute law shall determine whether any person acting or purporting to act on behalf of the Employer, Project Manager or Contractor is duly authorised, save to the extent that a party shall, by written notice to each of the others, designate a person or the holder of any office, to the exclusion of another person or holder of office, to have such authority, or to limit in any way, or terminate the authority of such designated person or holder of office.
- 2.3 The marginal notes or headings in this Contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction of the Contract.

### **3 GENERAL PROVISIONS**

- 3.1 No grant by the Employer or the Contractor to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.
- 3.2 The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of South Africa.
- 3.3 The language of the Contract and of written communications shall be English.
- 3.4 In the event that the Contractor and the Employer conclude a supplementary contract, the additional work executed in terms of such a contract shall not be taken to be a variation or addition under clause 29.6, but to be a separate contract. The value of such additional work shall, for the purposes of clause 29.7, not be taken into account for this Contract, but it shall be taken into account for the separate contract concluded in terms of the supplementary contract.
- 3.5 Except where otherwise provided in this Contract, the Contractor shall retain the copyright and other intellectual property rights in documents supplied by it to the Employer or Project Manager under this Contract.

- 3.6 The Contractor shall be deemed to have given the Employer a non-terminable, non-transferable, non-exclusive, royalty-free licence to copy, use and communicate the Contractor's documents provided to it by the Contractor under this Contract, including making and using modifications of such documents for the purposes of further work required to the Services.

#### **4 INTRODUCTION**

- 4.1 The Employer issued an RFT or Request for Quotation for provision of the Services with the option to undertake the redesign of the Services.
- 4.2 The Contractor has submitted the Contractors Bid and the Employer appointed the Contractor to provide the Services with the option to redesign the Services.

#### **5 CONDITION PRECEDENT**

- 5.1 The provisions of this Contract (other than clauses 1 to 3, 11, 14, 34 to 41 which will come into effect from the Signature Date) are subject to the fulfilment of the condition precedent that must be fulfilled within 30 (thirty) Business Days of the Signature Date (or such other date agreed by the Parties in Writing).
- 5.2 The Contractor shall deliver to the Employer the Performance Bond.
- 5.3 The Parties shall, where it is within their respective power and control to do so, use their respective reasonable commercial endeavours to procure the fulfilment of the Condition Precedent within the time period permitted therefore in clause 5.1.
- 5.4 If the Condition Precedent is not fulfilled on or prior to the date stipulated in clause 5.1 for such fulfilment, this Contract shall not come into force and effect and neither Party shall have any claim against the other Party as a result of or in connection with any such non-fulfilment (other than a claim for a breach by a Party of any of its obligations under clause 5.1).

## **6 PRIORITY OF DOCUMENTS**

6.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of such documents shall be in accordance with the following sequence -

6.1.1 the Contract, Annexures and schedules thereto;

6.1.2 the RFT; and

6.1.3 the Contractor's Bid.

6.2 If an ambiguity or discrepancy is found in the documents referred to in clause 6.1, the Project Manager shall issue a clarification or instruction. If either Party is not satisfied with the clarification or instruction of the Project Manager, it may refer the matter for dispute resolution in accordance with clause 33.

## **7 DURATION OF CONTRACT**

Subject to the provisions of clause 4 and any other clause in this Contract which entitles the Contractor to an extension of time, this Contract shall come into force and effect on the Commencement Date and shall endure for the Contract Period, whereafter it shall automatically terminate, provided that the Employer may, on notice given to the Contractor not less than 3 (three) months prior to the expiry date of the Contract Period, extend this Contract for a period to be determined by the Employer, during which period the Employer may terminate this Contract on 30 (thirty) days' notice to the Employer.

## **8 SCOPE OF SERVICES**

8.1 The Contractor shall undertake the Services in accordance with Good Industry Practice and the Scope of Services set in Annexure "B" and this Contract.

8.2 The Services to be undertaken by the Contractors shall include the following:

## **9 SUPPLY OF SERVICES**

9.1 The Contractor will use adequate numbers of appropriately skilled, qualified and experienced personnel and all equipment, assets and other resources necessary to provide the Services. The Contractor will throughout the Contract Period

consider the requirements of the Employer and apply its expertise to ensure that it renders the Services in a manner which, in its expert judgment, meets the needs of the Employer.

- 9.2 Services will be performed during working hours and in accordance with the Service Levels.
- 9.3 Where the performance of the Service requires the Contractor to liaise or co-operate with the Employer's personnel or other contractors rendering services to the Employer, the Contractor must give its full co-operation and deal with all such persons in a professional and courteous manner. The Employer will in turn procure the co-operation of its personnel and other contractors in their interactions with the Contractor.
- 9.4 The Contractor shall provide the Services applying Good Industry Practice.

## **10 SERVICE LEVELS AND SCHEDULES**

- 10.1 All Services costs shall conform to agreed prices.
- 10.2 A schedule reflecting details Services to be undertaken during the next month shall be submitted to the Employer by the Contractor before the end of each month during the Contract Period.
- 10.3 Work shall be undertaken by the Contractor as per agreed schedule and agreed turnaround times. Special requirements in relation to any work shall be agreed in progress meetings held between the Parties from time to time in accordance with clause 24.
- 10.4 Should additional Work be required, the Employer shall be advised immediately and a separate quotation for this work shall be prepared and submitted to the Employer for approval, prior to commencement of any such Work.

## **11 EMPLOYERS OPTION**

- 11.1 The Employer has appointed the Contractor to provide the Services with the option of the Employer to extend the scope of the Services to include the redesign of the Services.
- 11.2 The Employer shall have a right at its own discretion to extend and/or amend the

scope of Services to include the redesign of the Services based of the trends and failure analysis undertaken in accordance with clause 24.1.1.

- 11.3 Once the Employer has exercised its option to extend the scope of Services in accordance with clause 11.2, both Parties shall agree on the amount to be paid to the Contractor for the redesign of the Services.
- 11.4 The amount to be paid to the Contractor for the redesign of the Services shall be paid in accordance with the Redesign Payment Schedule which is annexure "T" of this Contract.

## **12 CONTRACTOR'S WARRANTIES**

- 12.1 The Contractor warrants that as at the Signature Date -
- 12.1.1 it is a limited liability company, duly incorporated and validly existing under the Applicable Laws and has taken all necessary actions to authorise its execution of and to fulfilment of its obligations under this Contract;
- 12.1.2 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the knowledge of the Contractor as at the Signature Date, threatened against it or the Subcontractors, which is likely to have a material adverse effect on the ability of the Contractor to provide the Services;
- 12.1.3 the Contractor is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Services;
- 12.1.4 no proceedings or any other steps have been taken or, to the knowledge of the Contractor, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Contractor, or under business rescue; or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 12.1.5 its obligations under this Contract are legal, valid, binding and enforceable against it in accordance with the terms of this Contract;
- 12.1.6 all information disclosed by or on behalf of the Contractor at any time up to the Signature Date and up to the end of the Contract Period and, in

particular, when submitting the Contractor's Bid prior to the award of this Contract to the Contractor, is true, complete and accurate in all material respects and the Contractor is not aware of any material facts or circumstances not disclosed to the Employer which would, if disclosed, be likely to have an adverse effect on the Employer's decision (acting reasonably) to award this Contract to the Contractor;

- 12.1.7 it will use reasonable care and skill in carrying out its obligations under this Contract;
- 12.1.8 it is not a Restricted Enterprise;
- 12.1.9 in being awarded its appointment under this Contract, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a corrupt activity as defined in terms of the Corrupt Activities Act Number 12 of 2004; and
- 12.1.10 it has all the insurances required in terms of this Contract.

### **13 EMPLOYER'S WARRANTIES**

- 13.1 The Employer hereby warrants that -
  - 13.1.1 the execution and performance of this Contract by the Employer does not and will not contravene any provision of its constitutive documents as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Employer as at the Signature Date;
  - 13.1.2 it has taken all necessary actions to authorise the execution and the fulfilment of its obligations under this Contract; and
  - 13.1.3 its obligations under this Contract are legal, valid, binding and enforceable against it, in accordance with the terms of this Contract.

### **14 INDEMNITIES**

- 14.1 The Contractor, in relation to the Services -
  - 14.1.1 indemnifies the Employer against any liability in respect of damage to, or physical loss of the property, or injury to or death of any person; and



- 14.1.2 shall be liable to the Employer for damage to or physical loss of all property of the Employer, arising directly from the execution of the Services.
- 14.2 The Contractor shall not be liable in respect of -
- 14.2.1 the permanent use or occupation of land by reason of the Services or any part thereof;
- 14.2.2 any nuisance, disturbance or interference arising necessarily by reason of the construction of the Services;
- 14.2.3 interference, whether temporary or permanent, with any servitude or any other right which is the unavoidable result of the construction of the Services in accordance with the Contract; or
- 14.2.4 death of, or any injuries or damage to persons or property resulting from any act, omission or neglect of the Employer, its agents, employees or other contractors (not being employed by the Contractor).

## **15 ASSIGNMENT AND SUBCONTRACTING**

- 15.1 The Contractor shall not assign the Contract or any part thereof, or any obligation under the Contract, or cede any right or benefit there under without the written consent of the Chief Procurement Officer and Group Chief Executive Officer of the Employer, which consent shall not be unreasonably withheld.
- 15.2 **Subcontracting**
- 15.2.1 The Contractor shall not subcontract the whole Contract and shall only subcontract a portion of the Services subject to the written approval of the Employer.
- 15.2.2 The Contractor shall be liable for the acts, defaults and negligence of any subcontractor, its agents or employees as fully as if they were the acts, defaults or negligence of the Contractor.
- 15.2.3 The contractual relationship between the Contractor and any subcontractors selected by the Contractor in consultation with the Employer in accordance with the requirements of and a procedure set out in this Contract, shall be the same as if the Contractor had appointed the Subcontractor without

consultation with the Employer.

15.2.4 Any appointment of a Subcontractor in accordance with clause 15.2.3 shall not amount to a contract between the Employer and the subcontractor, or any responsibility or liability on the part of the Employer to the subcontractor and shall not relieve the Contractor from any liability or obligation under the Contract.

15.2.5 In the event of termination of the Contract under clause 31, the Contractor shall assign the subcontract it has in place with a Subcontractor to the Employer, upon instruction by the Employer.

### 15.3 **Procedure for appointment of Subcontractors**

15.3.1 In the event that the Contractor wishes to appoint subcontractors or replace any one of the subcontractors, it shall -

15.3.2 consult with the Employer regarding such proposed subcontractor, including providing details as to such subcontractor's experience, financial standing and empowerment credentials;

15.3.3 obtain the Employer's written consent prior to contracting with any proposed subcontractor, which consent shall not be unreasonably withheld; and

15.3.4 in respect of the replacement of a Subcontractor procure that the terms and conditions upon which any replacement subcontractor is appointed are substantially the same as those on which the Subcontractor was appointed, and provide the Employer with a copy of the duly executed contract with any such proposed subcontractor.

15.3.5 Every Subcontractor shall enter into a subcontracting agreement with the Contractor which shall provide that -

15.3.6 such Subcontractor shall undertake the same obligations to the Contractor in respect of the subcontract as those by which the Contractor is bound in respect of the contract;

15.3.7 payment for work covered by the subcontract shall not be due until receipt by the Contractor of the payment certificate which includes the value of such work;

15.3.8 within 7 (seven) days of receipt by the Contractor of the Project Manager's

payment certificate in which the value of such Subcontractor's work is included, the Contractor shall make payment in full to the Subcontractor for work covered by the subcontract without discount or deduction, other than retention money as may be specified in the subcontract.

## **16 JOINT AND SEVERAL LIABILITY**

- 16.1 If the Contractor constitutes (under Applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons -
- 16.2 these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Services;
- 16.3 these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- 16.4 the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

## **17 BASIS OF CONTRACT**

- 17.1 The Employer shall have made available to the Contractor, as part of or available data by reference in the RFT or Request for Quotation, data relevant to the Services obtained by or on behalf of the Employer, but the Contractor shall be responsible for its own interpretation thereof and deductions thereof.
- 17.2 The Contractor shall be deemed to have obtained attainable information on risks, contingencies and all other information regarding circumstances which may influence or affect the Services.

## **18 CONTRACTOR'S GENERAL OBLIGATIONS**

### **18.1 Extent of obligations and liability**

- 18.1.1 The Contractor's general obligations under the Contract shall include the provision of the Services at its own expense, including all labour, equipment, tools, material, transport, consumables, stores, services, samples and Temporary Services, and everything, whether of a temporary or permanent nature, required in and for the construction, completion and commission of

the Services. The Contractor shall remedy any defects in the Services and the completed Services must be fit for the purpose for which the Services are intended as defined in the RFT and in this Contract.

## **18.2 Legal provisions**

- 18.2.1 The Contractor shall, in fulfilling the Contract, comply with Applicable Laws.
- 18.2.2 If required, the Contractor shall provide proof to the Project Manager that it is in good standing with respect to duties, taxes, levies and standing contributions required in terms of the Applicable Laws.

## **18.3 Notices and Fees**

- 18.3.1 The Contractor shall in the execution of the Services comply with the provisions of, and give all notices and pay all fees, taxes, levies and other charges required to be given or paid in terms of -
  - 18.3.1.1 applicable law, and
  - 18.3.1.2 the conditions imposed by any other body or person stated in this Contract.
- 18.3.2 The Contractor indemnifies the Employer against any liability for any breach of the provisions of clause 18.3.1.
- 18.3.3 The Employer shall be responsible for obtaining any planning approval required in respect of the Permanent Services and the Temporary Services.
- 18.3.4 The Contractor shall be responsible for obtaining all requisite consents and permits for the execution of the Services arising from the approvals consents referred to in clause 18.3.3.
- 18.3.5 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Contract or relating to it shall be given in Writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below -
- 18.3.6 if to the Employer at:

Address: Umjantshi House

30 Wolmarans Street

Braamfontein, Johannesburg

Attention: Legal Department

Postal address: Private Bag X101

Braamfontein

2017

18.3.7 Facsimile number:

18.3.8 Telephone number:

18.3.9 if to the Contractor:

Address:

Attention:

Postal address:

18.3.10 Facsimile number: +27 11 [●]

18.3.11 Telephone number: +27 11 [●]

18.3.12 Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.

18.3.13 Any notice or other communication given by any Party to the other Party which -

18.3.13.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or

18.3.13.2 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be refutably

presumed to have been received by the addressee at the time of delivery; or

- 18.3.13.3 is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.
- 18.3.14 The provisions of this clause 18.3 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 18.3.15 The Parties choose their respective physical addresses in clause 18.3.5 as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the domicilium citandi et executandi of the relevant Party until it nominates a new physical address within the Republic of South Africa in Writing to be its new domicilium citandi et executandi.

## **19 CHANGE IN CONTROL AND BBBEE**

- 19.1 The Contractor shall not, during the term of this Contract, be allowed to proceed with any of the following matters without the prior written consent from the Employer's Chief Procurement Officer and Group Chief Executive Officer -
- 19.1.1 any transfer of any amount of shares of the Contractor;
- 19.1.2 any change in the composition of the Contractor;
- 19.1.3 any change in the ownership of the Contractor;
- 19.1.4 any material change in the constitution, memorandum, articles of association or memorandum of incorporation or similar document providing for the creation, formation or incorporation of the Contractor; or
- 19.1.5 any change on the BBBEE component of the Contractor.

provided that the Contractor shall not require any approval and/or consent of the Employer and/or Employer's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clause 19.1.1 to 19.1.5 Employers not have impact of the BBBEE Status of the Contractor.

- 19.2 Breach of clause 19 by the Contractor shall result in immediate termination of the Contract by the Employer.

## **20 DRAWINGS AND INTELLECTUAL PROPERTY**

- 20.1 The Drawings will remain in the sole custody of the Project Manager. Three copies thereof will be furnished to the Contractor free of cost, but any further copies shall be paid for by the Contractor. The Contractor shall give reasonable notice in Writing to the Project Manager of any further drawing or specification that may be required for the execution of the Services.
- 20.2 One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on its site, and shall at all reasonable times be available for inspection and use by the Project Manager and any Subcontractor appointed in terms of clause 15.3 hereof.
- 20.3 Where the design of the Services or part of the Services is performed by the Contractor, it shall, unless otherwise directed, submit paper prints, in triplicate, of all plans or drawings of such Services to the Project Manager whose written approval must be obtained before the Work concerned is commenced. Such approval shall be subject to clause 3.2.
- 20.4 Design, plans and drawings prepared by the Contractor in accordance with clause 20.3 and paid for by the Employer including the intellectual rights thereto shall belong to the Employer.
- 20.5 In the event that the designs, drawings and/or plans are created by both Employer and Contractor, the intellectual property rights attaching to the Work done and paid for by Employer shall vest on the Employer. and the intellectual property rights associated therewith shall vest jointly in the Parties.
- 20.6 The Contractor hereby grants to the Employer a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, No.98 of 1978 -

- 20.7 to copy any plan, diagram, drawing, specification, Bill of Quantity, design calculation or other similar document made by the Contractor, other than under the direction or control of the Employer, in connection with the Services;
- 20.7.1 to make free and unrestricted use thereof for its own purposes;
- 20.7.2 to provide copies thereof to the Project Manager to be used by it for consultations and consulting services to the Employer;
- 20.7.3 to provide other parties with copies thereof where tenders are invited by the Employer.
- 20.8 Such non-exclusive licence shall apply mutatis mutandis to any plan, diagram, drawing, specification, bill, design calculation or other similar document made, other than under the direction or control of the Employer, by any Subcontractor of the Contractor. The provisions of this clause shall in the case of materials, machines or equipment to be provided as part of the Services, not apply in respect of documents created for the manufacturing thereof.
- 20.9 No separate or additional payment shall be made by the Employer in respect of any non-exclusive licence granted in terms hereof.
- 20.10 Save in respect of the Employer's or the Project Manager's design of the Services or method of construction and proprietary brand specified by the Employer or its Project Manager, or in connection with any Drawings, the Contractor indemnifies the Employer against any liability arising from the infringement of any patent rights, design, trade-mark or name or other protected right in respect of any design work, Construction Equipment, Plant, machine, work, method of construction or material used for or in connection with the Services.
- 20.11 Except where otherwise specified in the Contract, the Contractor shall pay all amounts due by it in respect of the rights referred to in clause 20.

## **21 CONTRACTOR'S SUPERINTENDENCE**

- 21.1 The Contractor shall provide all necessary superintendence during the execution of the Services.
- 21.2 The Contractor's manager shall have authority to receive, on behalf of the Contractor, all oral or written communications from the Project Manager or the



Project Manager's Representative.

## **22 TIME AND RELATED MATTERS**

### **22.1 Commencement of the Services**

22.1.1 Following the Commencement Date, and on the Project Manager's instruction, the Contractor shall, save as may be otherwise provided in the Contract or legally or physically impossible, commence executing the Services. Such instruction shall be subject to the submission by the Contractor, and approval by the Project Manager, of documentation required before commencement with Services execution which information shall be as follows -

22.1.1.1 any Consents required;

22.1.1.2 proof of insurance in accordance with clause 12.1.10.

22.1.1.3 The documentation referred to in clause 22.1.1 above shall be made available within 30 (thirty) days from the Commencement Date.

22.1.2 If the documentation referred to in clause 22.1.1 is not submitted within the number of days stipulated in clause 22.1.1.3 from the Commencement Date, or is found to be unacceptable, the Employer may terminate the Contract on written notice to the Contractor.

22.1.3 If the Project Manager's instruction to commence executing the Services, or to resubmit documentation, is not received by the Contractor within 7 (seven) days from the actual date of submission of the documentation referred to in clause 22.1.1, commencement of the Services shall be deemed to be on the expiry of such 7 (seven) days.

## **23 SUPERVISION**

23.1 The function of the Project Manager is to control, manage and administer the Contract acting on instructions of the Employer, in accordance with the provisions of the Contract.

23.2 Whenever the Project Manager intends, in terms of the Contract, to exercise any discretion or make or issue any ruling, contract interpretation or price

determination, he shall first consult with the Contractor and the Employer in an attempt to reach agreement. Failing agreement, the Project Manager shall act impartially and equitably and shall make a decision in accordance with this Contract, taking into account all relevant facts and circumstances.

- 23.3 The Project Manager will provide overall technical superintendence of the Services, and may direct the Contractor in terms of the provisions of this Contract or in respect of any measures which the Project Manager may require for the operations of the Employer on the safety of trains, the property and workmen of the Employer, and for the safety of other property and persons. The Contractor shall carry out the directions of the Project Manager. The superintendence exercised by the Project Manager, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Contractor of any of his duties and liabilities under the Contract, and shall not imply any assumption by the Employer or by the Project Manager of the legal and other responsibilities of the Contractor in carrying out the Services.
- 23.4 The Project Manager may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in Writing of such delegation, the Contractor shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Project Manager.
- 23.5 The Contractor shall exercise supervision over the Services at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Contractor. Such agent shall be competent and responsible, and have adequate experience in carrying out work of a similar nature to the Services, and shall exercise personal supervision on behalf of the Contractor. The Project Manager shall be notified in Writing of such appointment which will be subject to his approval.
- 23.6 The Contractor or the Contractor's Site Agent shall be available on the Site at all times while the Services are in progress to receive the orders and directions of the Project Manager.
- 23.7 If the Contractor is dissatisfied with any order or instruction of the Project Manager's representative, or any other person appointed by the Project Manager to act on his behalf, he shall be entitled to refer the matter to the Project Manager who shall promptly confirm, reverse or vary such order or instruction.

## 23.8 Instructions

- 23.8.1 On the Commencement Date, the Project Manager shall deliver to the Contractor copies of the Drawings and any instructions required for the commencement of the Services.
- 23.8.2 The Project Manager shall deliver to the Contractor from time to time, during the progress of the Services, drawings for construction purposes or instructions as shall be necessary for the proper and adequate construction, completion and defect correction of the Services.
- 23.8.3 The Contractor shall give adequate written notice to the Project Manager of any requirements additional to that contained in the Scope of Services or Drawings, which the Contractor may require for the execution of the Services and the Project Manager shall deliver such instructions and/or drawings to the Contractor.
- 23.8.4 The aforesaid instructions and/or Drawings referred to in clause 23.8.3 shall be delivered in good time taking the approved programme into account.
- 23.8.5 The Contractor shall give effect to and be bound by any drawing or instruction given in terms of this Clause and, if such drawing or instruction shall require any variation of, addition to, or omission from the Services, clause 29.6 shall apply.
- 23.8.6 If by reason of a failure by the Project Manager, after his receipt of written notice from the Contractor in terms of clause 23.8.3, to comply in good time with the provisions of clause 23.8.4, the Contractor suffers delay to Practical Completion and, he shall be entitled to make a claim for additional time in accordance with clause 32, for which purpose the time limit of 28 (twenty eight) days shall commence after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.

## **24 MONTHLY PROGRESS MEETINGS: EMPLOYER/CONTRACTOR OBLIGATION**

- 24.1 Monthly progress meetings shall be convened by and between the Employer and the Contractor if required, in order to review the following --
- 24.1.1 Review trends and failure analysis;
  - 24.1.2 Specification/work list requirements;
  - 24.1.3 Unit price/Quantity changes;
  - 24.1.4 Drawing amendments;
  - 24.1.5 Delivery schedule;
  - 24.1.6 Quality aspects;
  - 24.1.7 Financial aspects; and
  - 24.1.8 Manage exceptions.
- 24.2 The above-mentioned progress meetings shall be arranged from time to time by mutual agreement by and between the Employer and the Contractor.

## **25 DELAYS ATTRIBUTABLE TO THE EMPLOYER**

If the Contractor fails to comply with any agreed time schedule referred to in clause 10 as a result of failure or delay on the part of the Employer, its agents, employees or other contractors (not employed by the Contractor) in fulfilling any necessary obligations in order to enable the Services to proceed in accordance with the Contract, the Contractor shall be entitled to claim extra time incurred by it in performing the Services. The Contractor shall make such claim within 28 (twenty eight) days of such failure by the Employer to meet its contractual obligations. The Contractor's claim shall be submitted to the Project Manager stating in detail such failure by the Employer.

## **26 SUSPENSION OF THE SERVICES**

- 26.1 The Contractor shall, on the written order of the Project Manager stating the cause for suspension (other than force majeure in terms of clause 31), suspend the progress of the Services or any part thereof for such time or times and in such manner as the Project Manager shall order and shall, during such suspension,

properly protect the Services as far as is necessary unless such suspension is by reason of some default or breach of the Contract by the Contractor

- 26.2 If the progress of the Services or any part thereof is so suspended for more than 84 (eighty four) Days in total, the Contractor may deliver a written notice to the Project Manager requiring permission to proceed with the Services or that part thereof in respect of which progress is suspended.
- 26.3 If such permission is not granted within 28 (twenty eight) Days after the Project Manager's receipt of the written notice, the Contractor may, by a further written notice to the Employer, elect to treat the suspension, where it affects the whole Services, as a repudiation of the Contract by the Employer.

## **27 EXTENSION OF TIME FOR COMPLETION**

- 27.1 If the Contractor considers itself entitled to an extension of time for circumstances of any kind whatsoever which may cause it to fail to comply with any agreed time schedule referred to in clause 10, the Contractor shall claim in accordance with clause 32 for extension of time. Such extension of time shall take into account any non-Business Days and all relevant circumstances, including concurrent delays or savings of time which might apply in respect of such claim.
- 27.2 Without limiting the generality of clause 32.1 the circumstances referred to in that clause include -
- 27.2.1.1 the nature of additional work, time; and
- 27.2.1.2 any disruption which is entirely beyond the Contractor's control.
- 27.3 Instead of granting extension of time, if feasible, the Project Manager may request the Contractor to accelerate the rate of progress.

## **28 PENALTY FOR DELAY**

- 28.1 If the Contractor fails to complete the Services within the time stipulated in this Contract for completion of Services or a part or portion of Services, the Contractor shall be liable to the Employer for an amount calculated at 0.5% of the Contract Price per delayed Day per order, which shall be paid for every Day which shall elapse between the time for due completion and completion of the relevant

Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price.

28.2 The imposition of such penalty shall not relieve the Contractor from its obligation to complete Services or from any of its obligations and liabilities under the Contract,

28.3 The Employer may set off or deduct from the fees due to the Contractor any penalty amounts due and owing by the Contractor in terms of clause 28.1.

## **29 PRICE, PAYMENT AND RELATED MATTERS**

### **29.1 Payment to Contractor**

29.1.1 As consideration for the provision of the Services, the Employer shall pay the Contractor in terms of the provisions of the Contract.

29.1.2 Payment shall be made to the Contractor within thirty (30) Days after receipt of the relevant invoice/s and shall be the amount calculated as being the product of unit price and the quantity accepted as given on the relevant invoice (Refer to Annexure A for the unit prices).

29.1.3 The Employer will verify the invoices and authorize payment on condition that a Final Approval Certificate has been issued.

29.1.4 All invoices shall be paid within thirty (30) Days from the date of issue of the invoice by the Contractor. Failure by the Employer to pay duly issued invoices shall attract a penalty not exceeding 10% of the Contract value. The penalty shall be calculated at 0,5% per day of the invoiced amount of the value of the invoice.

### **29.2 Price**

29.2.1 The Contract Sum for the Services for the Contract Period is R\_\_\_\_\_ (\_\_\_\_\_) including VAT.

### **29.3 Payment in Applicable Currencies**

29.3.1 Payment of all amounts due and payable either to the Contractor or Employer shall be in South African Rand.

## 29.4 **Payment for Mobilisation**

- 29.4.1 If the Contractor is going be paid the Mobilisation Fee it shall be paid within 30 (thirty) days of fulfilment of the Condition Precedent set out in clause 4.
- 29.4.2 The Contractor shall use the Mobilisation Fee towards the purchase of material and equipment for the Services.
- 29.4.3 The Contractor shall provide the Employer with documentary proof of purchase of material and equipment purchased pursuant to clause 29.4.2.
- 29.4.4 The Contractor shall deliver to the Employer the documentary proof of purchase as contemplated in clause 29.4.3 within 30 (thirty) Days of payment of the Mobilisation Fee.
- 29.4.5 Failure by the Contractor to provide the Employer with documentary proof of purchase in accordance with clause 29.4.3 within the time frame stipulated in clause 29.4.4 shall be a breach of this Contract and the Employer shall also be entitled to Mobilisation Fee paid.

## 29.5 **Security**

The Contractor shall procure that the Performance Bond remains valid until the expiry of the Contract Period. The Performance Bond shall specify an expiry date not less than 36 Months from Commencement Date, and if the Contractor has not become entitled to receive the Final Approval Certificate of the Services by the date 14 (fourteen) days prior to that date, the Contractor shall procure the extension the validity of the Performance Bond until such time that the Services have been completed.

## 29.6 **Variations**

- 29.6.1 If, at any time the Project Manager shall require any variation of the form, quality or quantity of the Services or any part thereof that may be necessary or for any reason appropriate, he shall, subject to the terms of the Contract, be entitled to require the Contractor to do any of the following -
  - 29.6.1.1 increase or decrease the quantity of any Work;
  - 29.6.1.2 omit any such Work;

- 29.6.1.3 change the character or quality of any such Work;
- 29.6.1.4 change the levels, lines, position and dimensions of any part of the Services;
- 29.6.1.5 execute additional Work of any kind necessary for the completion of the Services; and
- 29.6.1.6 change the specified or approved sequence or method of rendering the Services.
- 29.6.2 No such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Furthermore, no such variation shall be binding on the Parties until reduced to Writing and signed by them.
- 29.6.3 No such variation shall be made by the Contractor without written orders from the Project Manager in which it is stated to be a “variation order”.
- 29.7 **Value of variations**
- 29.7.1 No variation orders shall exceed 10% (10 percent) of the Contract Price as required by the Employers procurement policies.
- 29.7.2 Subject to clause 29.6.2, no variation orders shall be valid unless approved by the Group Chief Executive Officer and the Chief Procurement Officer of the Employer.

## **30 TERMINATION**

- 30.1 This Contract may be terminated by either Party by giving a 90 (ninety) days’ notice or following the occurrence of either the Contractor’s Default or Employer’s Default.
- 30.2 If termination is as a result of the Employer’s Default, the Contractor shall be entitled to payment for all the Services undertaken by the Contractor up to the date of termination.



## **31 FORCE MAJEURE**

### **31.1 Definition of Force Majeure**

31.1.1 In this clause 31, "Force Majeure" means an exceptional event or circumstance -

31.1.1.1 which is beyond a Party's control,

31.1.1.2 which such Party could not reasonably have provided against before entering into the Contract,

31.1.1.3 which, having arisen, such Party could not reasonably have avoided or overcome, and

31.1.1.4 which is not substantially attributable to the other Party.

31.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions 31.1.1.1 to 31.1.1.4 above are satisfied -

31.2.1.1 war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

31.2.1.2 rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;

31.2.1.3 munitions of war, explosive Materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and

31.2.1.4 natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

### **31.3 Notice of Force Majeure**

31.3.1 If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 (fourteen) days after the Party became aware, or

should have become aware, of the relevant event or circumstance constituting Force Majeure.

31.3.2 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

31.3.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

31.3.4 Duty to Minimise Delay

31.3.5 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

31.3.6 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

#### 31.4 **Consequences of Force Majeure**

31.4.1 If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under sub-clause 31.3, and suffers delay and/or incurs additional costs by reason of such Force Majeure, the Contractor shall be entitled, subject to sub-clause 32 to -

31.4.1.1 an extension of time for any such delay, if completion is or will be delayed, under sub-clause 27, and

31.4.1.2 if the event or circumstance is of the kind described in of sub-clauses 31.2.1.1 to 31.2.1.4 , payment of any such additional cost.

31.4.2 After receiving this notice, the Parties shall proceed in accordance with clause 31.3 to agree or determine these matters.

#### 31.5 **Optional Termination, Payment and Release**

31.5.1 If the execution of substantially all the Services is prevented for a continuous period of 84 (eighty four) Days by reason of Force Majeure of which notice has been given under sub-clause 31.3, or for multiple periods which total

more than 140 (one hundred and forty) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In such event, the termination shall take effect 7 (seven) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 31.5.2.4 [Cessation of Work and Removal of Contractor's Equipment].

31.5.2 Upon such termination, the Project Manager shall determine the value of the Work done to date and issue a payment certificate to the Contractor which shall include -

31.5.2.1 the amounts payable for any work carried out for which a price is stated in the Contract;

31.5.2.2 the cost of equipment and materials ordered for the Services which have been delivered to the Employer, such equipment and materials shall become the property of (and be at the risk of) the Employer when paid for in full by the Employer, and the Contractor shall place the same at the Employer's disposal;

31.5.2.3 any other costs or liabilities which in the circumstances were reasonably incurred by the Contractor in the expectation of completing the Services; and

31.5.2.4 the cost of removal of Temporary Services and Contractor's Equipment from the Site and the return of these items to the Contractor.

## 31.6 **Release from Performance under the Law**

31.6.1 Notwithstanding any other provision of this clause 31.6.1, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance -

31.6.1.1 the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

- 31.6.1.2 the sum payable by the Employer to the Contractor shall be the same as would have been payable under sub-clause 31.5 [Optional Termination, Payment and Release] if the Contract had been terminated under sub-clause 31.5.

## **32 CONTRACTOR'S CLAIMS**

- 32.1 If the Contractor considers itself to be entitled to any extension of time for completion of the Services, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, as and not later than 28 (twenty eight) Days after the Contractor became aware, or should have become aware, of the event or circumstance. All requests for an extension of time shall be granted in the Employer's sole and absolute discretion, having considered the reasons for the request in consultation with the Project Manager. Should the Employer and/or the Project Manager require any additional information substantiating the Contractor's claim, the Contractor shall provide the Employer and/ or Project Manager with such information within 48 (forty eight hours).
- 32.2 If the Contractor fails to give notice of a claim within such period of 28 (twenty eight) Days, the relevant time for completion of the Services shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this clause 32 shall apply.
- 32.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 32.4 The Contractor shall keep such records as may be necessary to substantiate any claim made by it in accordance with this clause 32. Without admitting the Employer's liability, the Project Manager acting on instructions of the Employer may, after receiving any notice under this sub-clause, monitor the record-keeping and/or instruct the Contractor to keep further records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.
- 32.5 Within 28 (twenty eight) Days after the Contractor became aware (or should have

become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.

- 32.6 The Contractor shall send a final claim within 28 (twenty eight) Days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.
- 32.7 Within 42 (forty two) Days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer acting on instructions of the Employer and approved by the Contractor, the Employer acting on instructions of the Employer shall respond with approval, or with disapproval and detailed comments. It may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.
- 32.8 The Parties shall agree or determine the extension (if any) of the time for completion of any Services (before or after its expiry) in accordance with sub-clause 27 [Extension of Time for Completion], to which the Contractor is entitled under the Contract. If the Contractor does not agree with the determination of the Employer, it shall refer the matter for determination in accordance with clause 33.
- 32.9 The requirements of this sub-clause are in addition to those of any other sub-clause which may apply to a claim. If the Contractor fails to comply with this or another sub-clause in relation to any claim, any extension of time to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this sub-clause.

### **33 DISPUTE RESOLUTION**

- 33.1 If a dispute of any kind arises between the Contractor and the Employer, in connection with or arising out of the Contract or the execution of the Services, whether during the execution of the Services or after their completion, and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation, the matter in dispute shall, within 14 (fourteen) days of dispute having arisen, be

referred to the Project Manager with a copy to the Chief Executive Officers. The Project Manager shall decide the matter within 28 (twenty eight) days of receipt of the reference and notify the Contractor and Project Manager of his decision.

- 33.2 If a dispute arises between the Employer and the Contractor, including a dispute arising out of the Project Manager's decision in terms of clause 33.1 hereof, or if the Contractor is dissatisfied with any instruction, assessment, determination, valuation, variation or ruling given or made by the Project Manager in terms of his powers under the Contract, the matter shall be referred in Writing to the Chief Executive Officer within 28 (twenty eight) days of the decision of the Project Manager or of the dispute or dissatisfaction, as the case may be, having arisen.
- 33.3 The Parties shall thereafter endeavour to settle the dispute by way of negotiation.
- 33.4 The procedure and forum for the negotiations shall be subject to agreement between the Parties. The negotiations shall be without prejudice to either of the Parties and neither shall be entitled to rely upon admissions or concessions made during such procedures in any ensuing arbitration and/or litigation proceedings.
- 33.5 Either of the Parties may elect that the negotiation proceedings be facilitated by an independent mediator. In such case, the provisions of clause 33.10 shall apply mutatis mutandis to the appointment of such mediator. Each Party shall bear its own costs in respect of the mediation and pay half of the mediator's agreed fees and expenses.
- 33.6 If the Parties fail to reach a negotiated settlement, or negotiations break down on account of a deadlock, the Chief Executive Officers shall decide the dispute and shall advise their decision in Writing to the Project Manager and the Contractor within 42 (forty two) Days after the day of receipt by them of the reference in terms of clause 33.2. The Chief Executive Officers' decision shall forthwith be given effect to by the Project Manager, the Project Manager and the Contractor.
- 33.7 Unless the Contract has already been completed, repudiated or otherwise terminated, the Contractor shall, in every case proceed with the Services with all due diligence, unless and until the Chief Executive Officers' decision has been revised, as hereinafter provided for, by an arbitral award.
- 33.8 The Chief Executive Officers' decision shall be final and binding on the Parties.
- 33.9 Should either of the Parties be dissatisfied with the decision of the Chief Executive

Officers in terms of clause 33.6, it may, within 28 (twenty eight) Days after the receipt thereof, declare the matter to be in dispute by written notification to the Chief Executive Officers. Unless otherwise agreed, the matter shall be referred to an arbitrator appointed in terms of clause 33.10 hereof.

- 33.10 The appointment of an arbitrator shall be made by agreement between the Parties, after a written submission has been made by either Party to the other of a shortlist containing the names of 3 (three) suitably qualified persons.
- 33.11 If the Parties fail to agree within 14 (fourteen) Days of receipt of the submission, either Party may apply for the nomination of a suitably qualified person by the Chairperson for the time being of the Arbitration Foundation of Southern Africa ("AFSA"), or by the Vice Chairperson in the absence of the Chairperson.
- 33.12 The reference to the arbitrator shall, unless otherwise agreed, be deemed to be a submission to the arbitration of a single arbitrator in terms of the Arbitration Act (Act No. 42 of 1965, as amended), or any legislation passed in substitution thereof. The arbitration shall, unless otherwise agreed, be conducted in accordance with the AFSA Rules.
- 33.13 The arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certificate or valuation of the Project Manager, the Project Manager or the Executive Officers insofar as it may in his opinion be necessary to do so for the proper determination of the dispute.
- 33.14 Neither Party shall be limited in the proceedings before the arbitrator to the evidence or arguments submitted to the Project Manager, the Project Manager or the Executive Officers, for the purposes of preceding proceedings. The award of the arbitrator shall be final and binding on the Parties.
- 33.15 Arbitration proceedings may be entered into after and at any time before the completion or alleged completion of the Services, provided always –
- 33.16 that the preceding dispute resolution procedures stipulated herein have been followed and fully exhausted,
- 33.17 that no decision given by the Project Manager, the Project Manager or the Executive Officers in accordance with the foregoing provisions shall disqualify him as a witness and from giving evidence before the Arbitrator on any matter whatsoever.

ever relevant to the dispute so referred to the Arbitrator.

- 33.18 Any amount which may become payable by the Contractor to the Employer in consequence of any decision by the Chief Executive Officers or of an arbitrator's award, as the case may be, in accordance with the foregoing provisions of this clause, may be recovered in any manner described in clause 29 hereof or by instituting action in a court of competent jurisdiction.
- 33.19 The arbitrator's fees and expenses shall be borne by the parties concerned in accordance with the terms of the arbitrator's award. Should one Party pay the arbitrator's fees, such Party will have the right to recover from the other Party any amount of such fee for which that party is responsible in terms of the arbitrator's award.
- 33.20 Notwithstanding provisions of this clause 33 or any other clause in this Contract, either Party shall be entitled to proceed with court action to a court with relevant jurisdiction if they are not satisfied with the decision Chief Executive Officers.

#### **34 PUBLIC RELATIONS AND PUBLICITY**

- 34.1 The Contractor acknowledges that certain information pertaining to the Services is required to be disclosed in accordance with the statutory reporting obligations of the Employer as it may be required to publish from time to time in response to enquiries from -
- 34.1.1 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, of 1999;
- 34.1.2 the Auditor-General under the Public Audit Act, of 2004; and
- 34.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
- 34.2 Subject to clause 35, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract without the prior approval of the other Party, such consent not to be unreasonably withheld.



## 35 CONFIDENTIALITY

- 35.1 Each Party ("the Receiving Party") must treat and hold as confidential all information, which they may receive from the other party ("the Disclosing Party") or which becomes known to them concerning the Disclosing Party during the subsistence of this Contract and any extension thereof.
- 35.2 The confidential information of the disclosing Party shall, without limitation, include-
- 35.2.1 software and associated material and documentation, including information contained therein;
  - 35.2.2 all information relating to -
    - 35.2.2.1 the disclosing Party's past, present and future research and development;
    - 35.2.2.2 the Disclosing Party's business activities, products, services, customers and Employers, as well as its technical knowledge and trade secrets;
    - 35.2.2.3 the terms and conditions of this Contract; and
    - 35.2.2.4 Contractor's data.
- 35.3 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information -
- 35.3.1 it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
  - 35.3.2 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
  - 35.3.3 subject to the right to make the confidential information available to their Personnel under clause 35.3.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential

information of the Disclosing Party to third parties;

35.3.4 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

35.4 Upon termination or expiry of this Contract, the Receiving Party will deliver to the Disclosing Party, or at the Disclosing Party's option, destroy all originals and copies of the Disclosing Party's confidential information in its possession.

35.5 The foregoing obligations shall not apply to any information which -

35.5.1 is lawfully in the public domain at the time of disclosure;

35.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

35.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or

35.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

35.6 Nothing in this Clause shall preclude the Parties from disclosing the confidential information to their professional advisors or financiers in the bona fide course of seeking finance, business and professional advice.

35.7 Each Party hereby indemnifies the other Party against any loss or damage, which one Party may suffer as a result of a breach of this Clause by the other Party or its Personnel.

35.8 The provisions of this clause 35 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of 2 (two) years after the date of termination. Notwithstanding the aforementioned, the obligation to keep confidential business and trade secrets shall remain in force for an unlimited period of time.

## **36 LIMITATION OF LIABILITY**

- 36.1 Under no circumstances shall either Party be liable for any indirect, consequential or like damages which may arise pursuant to this Contract.
- 36.2 Furthermore, and notwithstanding anything to the contrary herein, the maximum total liability of the Parties to the Employer for any loss or damage suffered by the Employer, its agents, employees or sub-contractors, whether in contract, delict or otherwise, from any cause whatsoever, and whether in relation to damages, penalties or indemnities or otherwise, shall not exceed twice the Contract Price.
- 36.3 Subject to the foregoing, and to the extent that it relates to the Services, the Contractor indemnifies and shall keep Employer indemnified at all times against all losses sustained by Employer in consequence of any -
- 36.3.1 loss of or damage to property;
  - 36.3.2 breach of a statutory duty arising under applicable law;
  - 36.3.3 claim for or in respect of the death or personal injury of any individual; or
  - 36.3.4 any breach by the Contractor of any warranties given by it in this Contract;
  - 36.3.5 including, without limitation, any legal fees or costs, arising in connection with the performance or non-performance of any Services; and
  - 36.3.6 save to the extent caused by the negligence or wilful misconduct of Employer or by a breach by Employer of an express provision of this Contract.
- 36.4 The Contractor indemnifies and shall keep Employer indemnified at all times against all losses sustained by Employer in consequence of any claim or action whatsoever of the Contractor, instituted against Employer by a subcontractor of the Contractor. In the event that the Contractor or any of its sub-contractors rendering the Services to Employer, becomes or become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Contractor shall immediately inform the Employer thereof and on request supply the Employer with a copy of any award made pursuant to such proceedings or agreement and any documentation that the Employer may request in respect thereof.

### **37 ENTIRE AGREEMENT**

- 37.1 Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.
- 37.2 Each of the Parties acknowledges that -
- 37.2.1 it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly contained in or referred to in this Contract, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Contract; and
- 37.2.2 this clause 37 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Contract.

### **38 SEVERABILITY**

Whenever possible, each provision of this Contract shall be interpreted in a manner which makes it effective and valid under any Applicable Law, but if any provision of this Contract is held to be illegal, invalid or unenforceable under any Applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Contract, all of which shall remain in full force.

### **39 INDEPENDENT STATUS**

- 39.1 Nothing in this Contract shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.
- 39.2 It is recorded that it is the intention of the parties to exclude all legal consequences of a partnership.

#### **40 INDEPENDENT ADVICE**

40.1 Each of the Parties hereby respectively agrees and acknowledges that -

40.1.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Contract and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

40.1.2 each provision of this Contract (and each provision of the Annexures) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Contract.

#### **41 COUNTERPARTS**

This Contract may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Contract for all purposes.

SIGNED at Johannesburg on \_\_\_\_\_ 2014

The Contractor:

For: Contractor

\_\_\_\_\_

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED at Johannesburg on \_\_\_\_\_

The Employer: THE PASSENGER RAIL AGENCY OF SOUTH AFRICA,

For: THE EMPLOYER

\_\_\_\_\_  
PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

**ANNEXURE A**  
**PERFORMANCE BOND**



## **ANNEXURE B**

### **SCOPE OF SERVICES**

#### **SCOPE OF THE DESIRED SOLUTION**

The scope of work for this project shall entail the following activities:

As and when maintenance, repairs, refurbishment, and installations of the 11kV AC, 33kV AC and 3kV DC OHTE.

The appointed contractor is expected to attend to the following but not limited to:

- Conduct Maintenance, repairs, refurbishment, and installations of the 11kV AC, 33kV AC and 3kV DC OHTE.
- Perform preventive and predictive maintenance as per PRASA schedule.
- Respond to an emergency within an hour from the time the fault is logged.
- The contractor is to provide their machinery or equipment to perform the necessary
- maintenance.

Below is the material list in which work will be done on 11kV, 33kV and 3kV OHTE, but not limited to below:

33kVAC, 11kV AC and 3kV DC OHTE Concrete Mast Poles

33kVAC, 11kV AC and 3kV DC Steel Mast Pole.

33kV AC, 11kV AC and 3kV DC Medium Weight Steel Mast

33kV AC Heavy Weight Steel Mast

33kV AC Steel Tower Masts

33kVAC, 11kV AC and 3kV DC Lattice Bridge structures

11kV AC and 3kV DC A-Frame tensioning Bridge structure

33kVAC, 11kV AC and 3kV DC Boom structure

3kV DC Bonding

33kVAC, 11kV AC and 3kV DC Small steel Parts

33kVAC, 11kV AC and 3kV DC Concrete Foundations

33kVAC, 11kV AC and 3kV DC Suspension

33kVAC, 11kV AC and 3kV DC Numbering

33kVAC, 11kV AC and 3kV DC Spark gaps

33kVAC, 11kV AC and 3kV DC Nuts and bolts

33kVAC, 11kV AC and 3kV DC Support Structures

33kVAC, 11kV AC and 3kV DC Track Switches

11kV and 33kV AC Link switches

MOD's Motor Operated Device

33kVAC, 11kV AC and 3kV DC Lightning protection

3kV DC Section Insulators

33kVAC, 11kV AC and 3kV DC Insulators

3kV Overhead Conductors,

33kV AC and 11kV AC transmission line

33kV AC and 11kV AC Aerial Bundle Cable

33kV AC, 11kV AC and 3kV DC OHTE underground cable

Earth Wire

## **TECHNICAL SPECIFICATIONS RELATED TO THIS PROJECT**

Specifications and Drawings will be provided as needed and when required due to the nature of the contract (As and When), as the works that may arise are unpredictable.

Below are the Main Specifications and Drawings

No	Specification, Drawings and Engineering Instruction	
	Specification, Drawing No	Description
1	Specification for works on, over, under or adjacent to railway lines and near high voltage equipment.	E7/1
2	Safety arrangements and procedural compliance with the occupational health and safety Act; Act 85 of 1983 and regulations.	E4E
3	Electrical Safety Instruction	BBF3690 v3
4	Maintenance of 3kV DC Electrification	CEE-0128
5	Drawings, catalogues, instruction manuals and spares list for electrical equipment supplied under contract	CEE 0224
6	Occupational Health and Safety Specification	MSHERQ-001
7	Inspection and handing over of Electrical Equipment	CEE-GI_018
8	Work Permits: Administrative Procedures	GI.007
9	Procedure for Energising/De -energising	CEE-GI_019

Any further specification and drawing required will be given to the appointed contract as and when required, depending on the work that's carried out.

**ANNEXURE C**  
**SUBCONTRACTORS**

## ANNEXURE D

### WORKING HOURS AND DAYS

As per the below Bill of Quantity

Appointment of contractor to provide As and When Maintenance, Servicing and Repair for 11kV AC, 33kV AC AND 3KV DC OHTE.						
Item	Description	BILL ITEM	UNIT	ESTIMATED QUANTITY FOR YEAR 1	RATE ONLY YEAR 1	TOTAL YEAR 1
1	PROVISIONAL SUM (MATERIAL)	Material	SUM	1	R 3,400,000.00	R 3,400,000.00
1.1	Percentage mark-up for material		%	(.....%)		
2	PROVISIONAL SUM FOR (MACHINERY)	Machinery	SUM	1	R 100,000.00	R 100,000.00
2.1	Percentage mark-up for machinery		%	(.....%)		

<b>3</b>	<b>Normal Working Hours TECHNICIAN</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>200.00</b>		
<b>3.1</b>	<b>Normal Working Hours ERECTOR/TRACTION LINESMAN.</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>800.00</b>		
<b>3.2</b>	<b>Normal Working Hours GENERAL WORKER</b> The contractor is to tender their total cost per hour per labourer to perform Electrical work during normal working hours (07:30 to 16:00). This cost to includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>800.00</b>		

<b>4</b>	<b>Overtime and Saturday TECHNICIAN.</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>110.00</b>		
<b>4.1</b>	<b>Overtime and Saturday ERECTOR/TRACTION LINESMANS</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>450.00</b>		
<b>4.2</b>	<b>Overtime and Saturday GENERAL WORKER</b> The contractor is to tender their total cost per hour per labour to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>450.00</b>		

<b>5</b>	<b>Sunday and Public Holiday TECHNICIAN</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work on Sundays and public holidays. This cost includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>110.00</b>		
<b>5.1</b>	<b>Sunday and Public Holiday ERECTOR/TRACTION LINEMAN</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman, to perform Electrical work on Sundays and public holidays. This cost includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>420.00</b>		
<b>5.2</b>	<b>Sunday and Public Holiday GENERAL WORKER</b> The contractor is to tender their total cost per hour per labourer to perform Electrical work on Sundays and public holidays. This cost includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>420.00</b>		
<b>6</b>	<b>SUBTOTAL YEAR 1</b>					
<b>6.1</b>	<b>VAT@15% YEAR 1</b>	<b>-</b>				
<b>6.2</b>	<b>TOTAL INCL VAT YEAR 1</b>					



**Appointment of contractor to provide As and When Maintenance, Servicing and Repair for 11kV AC, 33kV AC AND 3KV DC OHTE.**

Item	Description	BILL ITEM	UNIT	ESTIMATED QUANTITY FOR YEAR 2	RATE ONLY YEAR 2	TOTAL YEAR 2
<b>1</b>	<b>PROVISIONAL SUM (MATERIAL)</b>	<b>Material</b>	<b>SUM</b>	<b>1</b>	<b>R 3,300,000.00</b>	<b>R 3,300,000.00</b>
<b>1.1</b>	<b>Percentage mark-up for material</b>		<b>%</b>	<b>(.....%)</b>	<b>%</b>	
<b>2</b>	<b>PROVISIONAL SUM FOR MACHINERY</b>	<b>Machinery</b>	<b>SUM</b>	<b>1</b>	<b>R 100,000.00</b>	<b>R 100,000.00</b>
<b>2.1</b>	<b>Percentage mark-up for Machinery</b>		<b>%</b>	<b>(.....%)</b>	<b>%</b>	
<b>3</b>	<b>Normal Working Hours TECHNICIAN</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>200.00</b>		
<b>3.1</b>	<b>Normal Working Hours ERECTOR/TRACTION LINESMAN.</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>800.00</b>		

<b>3.2</b>	<b>Normal Working Hours GENERAL WORKER.</b> The contractor is to tender their total cost per hour per labourer to perform Electrical work during normal working hours (07:30 to 16:00). This cost to includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>800.00</b>		
<b>4</b>	<b>Overtime and Saturday TECHNICIAN.</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>110.00</b>		
<b>4.1</b>	<b>Overtime and Saturday ERECTOR/TRACTION LINESMANS</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>450.00</b>		
<b>4.2</b>	<b>Overtime and Saturday GENERAL WORKER</b> The contractor is to tender their total cost per hour per labour to perform Electrical work after normal working hours and Saturdays. This cost includes traveling cost but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>450.00</b>		

<b>5</b>	<b>Sunday and Public Holiday TECHNICIAN</b> The contractor is to tender their total cost per hour per Technician to perform Electrical work on Sundays and public holidays. This cost to includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>Technician</b>	<b>Hour</b>	<b>110.00</b>		
<b>5.1</b>	<b>Sunday and Public Holiday ERECTOR/TRACTION LINEMAN</b> The contractor is to tender their total cost per hour per Erector/Traction Linesman, to perform Electrical work on Sundays and public holidays. This cost includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>Erector/ Traction Linesman</b>	<b>Hour</b>	<b>420.00</b>		
<b>5.2</b>	<b>Sunday and Public Holiday GENERAL WORKER</b> The contractor is to tender their total cost per hour per labourer to perform Electrical work on Sundays and public holidays. This cost includes traveling costs but exclude material and machinery, which has previously been dealt with.	<b>General Worker</b>	<b>Hour</b>	<b>420.00</b>		
<b>6</b>	<b>SUBTOTAL YEAR 2</b>					
<b>6.1</b>	<b>VAT@15% YEAR 2</b>	<b>-</b>				
<b>6.2</b>	<b>TOTAL INCL VAT YEAR 2</b>					

## Consolidated BOQ

PRICE SUMMARY INCLUDING TAX	
YEAR 1	YEAR 2
R	R
	R

**ANNEXURE E**  
**REQUEST FOR TENDER**

## ANNEXURE F

Date: .....

TO: Regional Director

Department of Labour

.....

.....

.....

### **OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993 :**

#### **GENERAL ADMINISTRATIVE REGULATION :**

#### **NOTICE OF CARRYING OUT OF CONSTRUCTION WORK**

Dear Sir

With reference to the above Regulation we submit the required information:

- (a) The physical address of construction work to be carried out:

\_\_\_\_\_

\_\_\_\_\_

- (b) The nature of work to be undertaken:

\_\_\_\_\_

- (c) Expected date on which work will commence: \_\_\_\_\_

- (d) Anticipated date for completion: \_\_\_\_\_

Kind regards

Signature: .....

Designation: .....

Name: .....

## **ANNEXURE G**

### **OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993:**

#### **GENERAL SAFETY REGULATIONS 11(1):**

#### **SUPERVISION OF CONSTRUCTION/BUILDING WORK:**

#### **DESIGNATED EMPLOYEE (CONSTRUCTION WORK SUPERVISOR)**

- a) In terms of the provisions of Regulation 11(1) I, ..... (representing the Employer) do hereby appoint
- b) ..... as the Designated Employee on the premises at ..... (physical address) to assist in enforcing the observance of the Regulations framed under the abovementioned Act.
- c) Your designated area(s) is/are as follows :

.....

.....

Date .....

Signature: .....

Designation : .....

#### **ACCEPTANCE OF DESIGNATION**

I, ..... do hereby accept this designation and acknowledge that I understand the requirements of this appointment.

Date : .....

Signature: .....

Designation .....



## **ANNEXURE H**

### **OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993:**

#### **GENERAL SAFETY REGULATIONS 13D(3)(b):**

#### **SUPERVISION OF CONSTRUCTION/BUILDING WORK:**

#### **SCAFFOLD FRAMEWORK: EXPERIENCED PERSON**

In terms of the provisions of Regulation 13D(3)(b) I, .....

..... (representing the Employer) do hereby appoint  
..... as the Experienced Person on the premises at  
.....

..... (physical address) to ensure that all scaffold are  
erected, altered or dismantled in accordance with the Regulations pertaining to scaffolding.

Date : .....

Signature : .....

Designation : .....

### **ACCEPTANCE OF DESIGNATION**

I, ..... do hereby accept this designation and  
acknowledge that I understand the requirements of this appointment.

Date : .....

Signature : .....

Designation : .....

## **ANNEXURE I**

### **OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993**

#### **DECLARATION**

In terms of the above Act, I ..... am personally assuming the duties and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of Section 16(1), I will, as far as is reasonably practicable, ensure that the duties and obligations of the Employer as contemplated in the above Act are properly discharged.

Signature : .....

Date : .....

Access to : ..... (Area)

Name of Contractor/Builder: .....

Contract/Order No. ....

The Contract Services site/area described below are made available to you for the carrying out of associated Services in terms of your contract/order with (company)

.....

Kindly note that you are at all times responsible for the control and safety of the Services Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act 85 of 1993 as amended, and all conditions of the contract pertaining to the site of the Services as defined and demarcated in the contract documents including the plans of the site or work areas forming part thereof.

Signed : ..... Date : .....

**PROJECT MANAGER**

### **ACKNOWLEDGEMENT OF RECEIPT**

Name            of            Contractor: .....I,  
..... do hereby acknowledge and accept the duties and obligations in respect of the Safety of the site/area of Services in terms of the Occupational Health and Safety Act 85 of 1993.

Name: ..... Designation .....

Signature: ..... Date .....

## **ANNEXURE J**

### **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**(incorporated in terms of the Legal Succession Act, 9 of 1989)**

#### **SAFETY ON SITE**

1. The Contractor shall for the duration of Contract No. ...., in respect of the provision of services to the Region, comply with the provisions of the Occupational Health and Safety Act 85 of 1993 and all regulations promulgated under this Act. For the purposes of the Act and in so far as the Contractor's personnel/employees are concerned, the Site on which the Contractor conducts the services for the Employer occupied by the Contractor, shall for the duration of the aforementioned agreement be deemed to be under the control of the Contractor. As employer, he is in every respect responsible for the compliance, at his own cost, with the provisions of this Act.
2. All records required in terms of this Act, and especially those required in terms of Section 24 of the Act with regard to the reporting of incidents, shall be available for inspection during normal business hours without any prior notice by the designated risk control official(s) of the Employer reportable incidents shall be reported by the Contractor to the Department of Manpower and the designated risk control official(s) of the Employer shall be informed forthwith.
3. The Contractor shall in terms of Sections 17, 18, 19 and 20 of the Act, appoint Safety Representatives and Safety Committees who shall meet as prescribed in Section of the Act. Minutes of the meetings shall be retained as prescribed in Section 7 of the General Administrative Regulations of the Act and shall be made available, on request, to the designated risk control official(s) of the Employer.

Signed at ..... at this ..... day of

..... 20.....

**WITNESS:**

.....

**TENDERER:**

.....

## **ANNEXURE K**

### **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**(incorporated in terms of the Legal Succession Act, 9 of 1989)**

### **COMPLIANCE WITH OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993 AND REGULATIONS**

#### **AGREEMENT**

I, the undersigned, .....

(full names and surname), on behalf of .....

(name of company/close corporation), with registration number .....,

in my capacity as .....

and duly authorised hereto by virtue of a resolution by the directors/members dated ..... (an extract of which is attached hereto), agree that the company/close corporation is an employer in its own right with rights and obligations, as set out in the Occupational Health and Safety Act 85 of 1993, and that the company/close corporation shall ensure that all work performed and all machinery and plant used in terms of the above mentioned contract shall be in accordance with the terms and conditions of the said Act.

The company/close corporation furthermore agrees to comply at all times with the terms and conditions of the various instructions attached hereto, and which may be amended from time to time. Further instructions may also be added from time to time by the Employer.

Signed at ..... on this ..... day of  
..... 20.....

**WITNESS :**

**TENDERER :**

.....

.....



## **ANNEXURE L**

### **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**(incorporated in terms of the Legal Succession Act, 9 of 1989)**

#### **GENERAL INFORMATION**

1. The Occupational Health and Safety Act comprises sections 1 to 50 and all irrevocable REGULATIONS promulgated in terms of the former Machinery and Occupational Safety Act, 1986 (Act No. 6 of 1986) as amended as well as other REGULATIONS which may be promulgated in terms of the new Act.
2. "Mandatory" is defined as including an agent, a contractor or a sub- contractor for the work, but without derogating from his status in his own right as an Employer or user of plant or machinery.
3. Section 37 of the Occupational Health and Safety Act potentially holds employers (principles) responsible for the unlawful acts or omissions of mandatories (contractors) save where a Written Contract between the parties has been concluded containing arrangements and procedures to ensure compliance with the said Act by the mandatory.
4. All documents attached or referred to in the above Contract form an integral part of the Contract.
5. To perform in terms of this Contract mandatories must be familiar with the relevant provisions of the Act.
6. Mandatories who utilise the services of their own mandatories (sub-contractors) are advised to conclude a similar Written Contract.
7. Be advised that this Contract places the onus on the mandatory to contact the employer in the event of inability to perform as per this Contract. The Employer, however reserves the right to unilaterally take any steps as may be necessary to enforce this Contract.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**WITNESS :**

**TENDERER :**

.....

.....

**ANNEXURE M**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**(incorporated in terms of the Legal Succession Act, 9 of 1989)**

**COMPLIANCE WITH THE COMPENSATION FOR OCCUPATIONAL  
INJURIES AND DISEASES ACT 130 of 1993**

1. The Contractor and sub-contractor shall comply with the provisions of the above Act and all regulations promulgated under this Act.
2. Written proof of compliance shall for the duration of Contract No. ...., in respect of the provision of Signal personnel to the Employer, be made available, upon request, to the Employer.

Signed at \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_ 20\_\_\_\_\_.

**WITNESS :**

**TENDERER :**

.....

.....

## **ANNEXURE N**

### **CONTRACTUAL SAFETY CLAUSES**

**Between**

**“THE EMPLOYER” AND “.....”**

**FOR THE PROJECT: .....**

1. The parties agree on the following arrangements according to section 32 (1...2) of the Occupational Health and Safety Act 85 of 1993 to ensure compliance by the mandatory with the provisions of the Act.
2. That a Contractor is an “employer” in his own rights as defined in section 1 of Act 85 of 1993 as amended and that he must fulfil all his obligations as an Employer in terms of the Act.
3. The “Employer”, and the Project Manager hereby agree, in terms of the provisions of Section 37 (1...2) of the Occupational Health and Safety Act 85 of 1993 , hereinafter referred to as the (Act) that the following arrangements and procedures shall apply between them to ensure compliance by the Project Manager with the provisions of the Act, namely:
  - a) The Project Manager undertakes to acquaint the appropriate Officials and Employees of the Contractor/s with all relevant provisions of the Act and the regulations promulgated in terms of the Act.
  - b) The Project Manager undertakes that all relevant duties, obligations and prohibitions imposed in terms of the Act and regulations in terms of the Act and Regulations will be fully complied with.
  - c) The Project Manager hereby accepts sole liability for such due compliance with relevant duties, obligations and prohibitions imposed by the Act and Regulations and expressly absolves the Employer from itself being obliged to comply with any

of the aforesaid duties, obligations and prohibitions.

- d) The Project Manager agrees that any duly authorized officials of the Employer shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the Contractor has complied with his undertakings as set out more fully in paragraphs (a) and (b) above, which steps may include, but will not be limited to, the right to inspect any appropriate records held by the Project Manager/Contractor.
  - e) The Project Manager/Contractor shall be obliged to report forthwith to the employer any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the Act and Regulations, pursuant to work performed in terms of this Contract, and shall, on written demand, provide full details in Writing of such investigation, complaint or criminal charge.
  - f) The Project Manager/Contractor shall comply with the requirements of Act 85 of 1993, in its entirety.
- 4. Where special permits are required such as electrical switching, hot work permits, etc. the contractor shall obtain them from a person designated by the Employer for this purpose, and all requirements of the permit must be strictly complied with by the Project Manager/Contractor. As well as to comply fully with the general conditions and specifications in E7/1 2012 of April 1991 Annexures "A" & "B" as well as Transnet, Metrorail, Safety Instructions for H.V. Electrical equipment, engineering instructions and E.4E (November 1996) specifications.
  - 5. The Project Manager's appointed Health and Safety Co-ordinator must liaise with the Employer on matters pertaining to occupational health and safety and be part of such internal safety committee while on contract.
  - 6. The appointed Health and Safety Co-ordinator must liaise at least once a week with the Risk Manager of the Employer.
  - 7. The Project Manager shall furnish Risk Manager of the Employer immediately with full particulars of any sub-contractor that he may involve in the contract in order that the sub-contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.
  - 8. The Project Manager shall advise the Risk Manager of the Employer Services of any hazardous or potentially hazardous situations that may arise from work being performed

either by the Contractor or his sub-contractor.

9. Copies of all appointments required by the Act must be given to the Risk Manager of the Employer.
10. A letter of good standing in terms of section 80 (Employer to register with the Compensation Commission) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, must also be furnished.
11. All clauses in the contract pertaining to health and safety form an integral part of the contract and if not complied with may be construed as breach of contract.
12. The Contractor:
  - a) must identify work processes that will be undertaken during the contract;
  - b) must identify any hazards that might occur due to work processes;
  - c) must provide control processes and mechanisms to prevent hazards developing into incidents.
13. Provision shall be made by the Contractor to ensure that the work does not hinder and/or endanger commuters on the premises. Sufficient room for movement especially during peak times, shall be provided for commuters.
14. An authorized representative of the Employer can stop any unsafe violation being done by the contractor or organize the necessary remedial steps (the cost whereof shall be for the contractor's account) should any deviation from these conditions and or contract come to the attention of the Employer, until the Contractor has complied with such conditions.
15. This document or a copy thereof must be in the possession of the Contractor/Employer or an Employee of the contractor who is in charge of the premises. All Act 85 appointed persons names with their level of responsibility according to Act 85 to be submitted to Risk Manager the Employer as applicable.

## **WHAT IS A SAFETY CASE?**

A Safety Case is an arrangement or promise by one party using or operating on the assets of the other party, to execute its activities in a safe and responsible manner, and in which risks are identified and the control mechanisms and program to manage the activities and risks are spelled out in detail to the satisfaction of the other party.

## **PREPARING A SAFETY CASE**

1. Identify players (e.a. Contractor/Sub-contractor).
2. What acts, rules, regulations, codes of practice, etc. are applicable.
3. Identify hazards and assess risks to commuters, public, the Employer personnel, Rolling Stock, etc.
4. Access control mechanisms for managing risks, are they in place and adequate?
5. Determined action.
6. Indemnifies other party of responsibility of own personnel's health and safety. Accountability must be made clear.
7. Name of the responsible person (Act 85/1993) for the project.
8. Document aforesaid in a Safety Case, signed by the Project Manager.

## **WHY THE NEED FOR A SAFETY CASE?**

1. Act 85 of 1993 requires that the working environment is safe and without risk to the safety and health of employees, clients and public in general. The Safety Case will identify the risks that one Party's activities may expose the other Party's employees, clients and the general public to, and the mechanisms required to address these risks.
2. Because there are two asset owners, viz Intersite and the Project Manager (Project Manager/Contractor assets referred to are scaffolds, machines, vehicles, etc.), the relationships, responsibilities and accountability to ensure safe working are essential, which will be addressed in the Safety Case.
3. Railway operations are large and complex. The mix of technologies, equipment age, the

workforce's attitude, all affect safety. The Safety Case is intended to be part of the self-regulatory mechanism in which the parties give confidence to each other that they have the ability, commitment and resources to properly assess and effectively manage the risks to health and safety of staff and the general public.

4. The Safety Case is a tool for directing the attitudes and activities of all personnel, from top management to worker. It is therefore essential that all levels be involved in the process to obtain full commitment to ensure that safe practice are in place and carried out.
5. The Safety Case will identify the risks and the mechanism required to address them.
6. A Safety Case is unique to each project or any phase of a project.

### **General Information**

1. The Occupational Health and Safety Act Comprises Sections 1 to 50 and all unrepealed regulations promulgated in terms of the former Machinery and Occupational Safety Act 85 of 1993 as amended as well as other regulations promulgated in terms of the former Machinery and Occupational Safety Act 85 of 1983 as amended as well as other regulations which may be promulgated in terms of the new Act.
2. "Mandatory" is defined as including an agent, a contractor or a sub-contractor for work, but without derogating from his status in his own right as an Employer or user of plant or machinery.
3. Section 37 of the Occupational Health and Safety Act potentially punishes employers (principles) for the unlawful acts or omissions of mandatories (contractors) save where a Written Contract between the parties has been concluded containing arrangements and procedures to ensure compliance with the said act by the mandatory.
4. All documents attached hereto or referred to in the above Contract form an integral part of the Contract.
5. To perform in terms of this Contract mandatories must be familiar with the relevant provisions of the Act.
6. Mandatories who utilize the services of their own mandatories (sub-contractors) are advised to conclude a similar Written Contract.
7. Be advised that this Contract places the onus on the mandatory to contact the employer



in the event of inability to perform as per this Contract.

8. The Employer, however, reserves the right to unilaterally take any steps as may be necessary to enforce this Contract.

## ANNEXURE O

**“THE EMPLOYER” AND .....**

**“MANDATORY”**

**FOR THE PROJECT: .....**

I “\_\_\_\_\_” representing

.....

(Mandatory) do hereby acknowledge that

..... is an Employer in it's own right with duties as prescribed in the Occupational Health and Safety Act 85 of 1993 as amended and agree to ensure that all work will be performed or machinery and plant used in accordance with the provisions of the said Act.

I furthermore agree to comply with the requirements of and the Employer as contained in the documents attached hereto and to liaise with the employer should I for whatever reason, be unable to perform in terms of this Contract. The mandatory responsibilities remain mandatory's onus and do not absolve the mandatory from any agreements or laws.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**Signature \_\_\_\_\_ on behalf of**

..... (Mandatory)

Signature \_\_\_\_\_ of behalf of (the Employer).

## **ANNEXURE P**

### **SPECIFICATION E4E PRASA (2004)**

#### **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

#### **SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE**

#### **WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT**

#### **(ACT 85 OF 1993) AND APPLICABLE REGULATIONS**

### **1. General**

- 1.1 The Contractor and Transnet Limited (hereinafter referred to as “Transnet”) are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.
- 1.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the contract work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Contract.
- 1.3 The Contractor accepts his obligation to complying fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.
- 1.4 Transnet accepts, in terms of the Act, its obligations as an employer of its own

employees working on or associated with the site or place of work, and the Contractor and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Services.

- 1.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

## 2. Definitions

- 2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -

- 2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 2003 means any work in connection with: -

- (a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
- (b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;
- (c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or
- (d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;

- 2.3 "**competent person**" in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed:

Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;

- 2.4 "**contractor**" means principal contractor and "subcontractor" means contractor as defined by the Construction Regulations, 2003.

- 2.5 **“fall protection plan”** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;
- 2.6 **“health and safety file”** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;
- 2.7 **“Health and Safety Plan”** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;
- 2.8 **“Risk Assessment”** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 2.9 **“the Act”** means the Occupational Health and Safety Act No. 85 of 1993.

### **3. Procedural Compliance**

- 3.1 The Contractor who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-
- (a) includes the demolition of a structure exceeding a height of 3 metres; or
  - (b) includes the use of explosives to perform construction work; or
  - (c) includes the dismantling of fixed plant at a height greater than 3m,
- and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-
- (a) includes excavation work deeper than 1m; or
  - (b) includes working at a height greater than 3 metres above ground or a landing.
- 3.2 The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Contractor shall ensure that a copy of the completed notification form is kept on

site for inspection by an inspector, Technical Officer or employee.

- 3.3 The Contractor shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.
- 3.4 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the Technical Officer.
- 3.5 In the case of a self-employed Contractor or any subcontractor who has the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Contractor shall in such a case execute and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.
- 3.6 The Contractor shall, before commencing any work, obtain from the Technical Officer an access certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.
- 3.7 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Protekon's safety requirements and procedures.

#### **4. Special Permits**

Where special permits are required before work may be carried out such as for hotwork, isolation permits, work permits and occupations, the Contractor shall apply to the Technical Officer or the relevant authority for such permits to be issued. The Contractor shall strictly comply with the conditions and requirements pertaining to the issue of such permits.

#### **5. Health and Safety Programme**

- 5.1 The Tenderer shall, with his tender, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure

compliance by him with the Act and Regulations and particularly in respect of: -

- (i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;
- (ii) the execution of the contract work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;
- (iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.

5.2 The Contractor's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.

5.3 The Contractor shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:

- (a) The identification of the risks and hazards that persons may be exposed to;
- (b) the analysis and evaluation of the hazards identified;
- (c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;
- (d) a monitoring and review plan.

5.4 The Health and Safety Plan shall include full particulars in respect of: -

- (a) The safety management structure to be instituted on site or place of work and the names of the Contractor's health and safety representatives and members of



safety committees where applicable;

- (b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;
- (c) the safety equipment, devices and clothing to be made available by the Contractor to his employees;
- (d) the site access control measures pertaining to health and safety to be implemented;
- (e) the arrangements in respect of communication of health and safety related matters and incidents between the Contractor, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Contract forming part of the Contract and
- (f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Contract.

5.5 The Health and Safety programme shall be subject to the Technical Officer's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothes be issued which, in the Technical Officer's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act and Regulations. The Technical Officer or his deputy shall be allowed to attend meetings of the Contractor's safety committee as an observer.

5.6 The Contractor shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.

5.7 The Contractor shall stop any subcontractor from executing any construction work, which is not in accordance with the Contractor's, and/or subcontractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.

5.8 The Contractor shall ensure that a copy of the Health and Safety Plan is available on

site for inspection by an inspector, Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

- 5.9 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.
- 5.10 The Contractor shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.11 The Contractor shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.12 The Contractor shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

## **6. Fall Protection Plan**

- 6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- 6.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of Contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.
- 6.3 The fall protection plan shall include: -
  - (a) A Risk Assessment of all work carried out from an elevated position;
  - (b) the procedures and methods to address all the identified risks per location;
  - (c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;

- (d) the training of employees working from elevated positions; and
- (e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

## **7. Hazards and Potential Hazardous Situations**

The Contractor and the Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the Contract by the Contractor or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the contract work.

## **8. Health and Safety File**

- 8.1 The Contractor shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.
- 8.2 The Contractor shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, contractor or the Technical Officer.
- 8.3 The Contractor shall hand over a consolidated health and safety file to the Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.

**ANNEXURE 1 TO ANNEXURE P**

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993**

**Regulation 3(1) of the Construction Regulations**

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**NOTIFICATION OF CONSTRUCTION WORK**

1(a) Name and postal address of principal contractor:

\_\_\_\_\_

\_\_\_\_\_

(b) Name and tel. no of principal contractor's contact person:

\_\_\_\_\_

\_\_\_\_\_

2. Principal contractor's compensation registration number:

\_\_\_\_\_

3(a) Name and postal address of client:

\_\_\_\_\_

(b) Name and tel no of client's contact person or agent:

\_\_\_\_\_

4(a) Name and postal address of designer(s) for the project:

---

(b) Name and tel. no of designer(s) contact person:

---

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 6(1).

---

6. Name/s of principal contractor's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2).

---

7. Exact physical address of the construction site or site office:

---

8. Nature of the construction work:

---

9. Expected commencement date: \_\_\_\_\_

10. Expected completion date: \_\_\_\_\_

11. Estimated maximum number of persons on the construction site: \_\_\_\_\_

12. Planned number of contractors on the construction site accountable to the principle contractor: \_\_\_\_\_

13. Name(s) of contractors already chosen.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Principal Contractor**

\_\_\_\_\_

**Client**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Date**

- \* THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.
  
- \* **ALL PRINCIPAL CONTRACTORS** THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.

**ANNEXURE 2 TO ANNEXURE P**

**(COMPANY LETTER HEAD)**

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993):**

**SECTION/REGULATION:** \_\_\_\_\_

**REQUIRED COMPETENCY:** \_\_\_\_\_

In terms of \_\_\_\_\_ I, \_\_\_\_\_

representing the Employer) do hereby appoint

\_\_\_\_\_

As the Competent Person on the premises at

\_\_\_\_\_

(physical address) to assist in compliance with the Act and the applicable Regulations.

Your designated area/s is/are as follows: -

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

---

**ACCEPTANCE OF DESIGNATION**

***I, \_\_\_\_\_ do hereby accept this  
Designation and acknowledge that I understand the requirements of this appointment.***

**Date** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**ANNEXURE 3 TO ANNEXURE P**

**(COMPANY LETTER HEAD)**

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993):**

**DECLARATION**

In terms of the above Act I, \_\_\_\_\_ am personally assuming the duties and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of Section 16(1), I will, as far as is reasonably practicable, ensure that the duties and obligations of the Employer as contemplated in the above Act are properly discharged.

***Signature:*** \_\_\_\_\_

***Date:*** \_\_\_\_\_

**ANNEXURE 4 TO ANNEXURE P**

**(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)**

**SITE ACCESS CERTIFICATE**

Access to: \_\_\_\_\_(Area)

Name of Contractor/Builder \_\_\_\_\_

Contract/Order No.: \_\_\_\_\_

The contract Services site/area described above are made available to you for the carrying out of associated Services

In terms of your contract/order with

(Company)\_\_\_\_\_

Kindly note that you are at all times responsible for the control and safety of the Services Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, and all conditions of the Contract pertaining to the site of the Services as defined and demarcated in the contract documents including the plans of the site or work areas forming part thereof.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**TECHNICAL OFFICER**

---

**ACKNOWLEDGEMENT OF RECEIPT**

**Name of Contractor/Builder: -**

\_\_\_\_\_, I,

\_\_\_\_\_ do hereby  
acknowledge and accept the duties and obligations in respect of the Safety of the  
site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of  
1993.

**Name:** \_\_\_\_\_ **Designation:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## ANNEXURE Q



# PASSENGER RAIL AGENCY OF SOUTH AFRICA

## **SPECIFICATION FOR SERVICES ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND NEAR HIGH VOLTAGE EQUIPMENT (E7/1 2012)**



ISSUED BY : The Executive Manager

Asset Management and Development

*September 1999*

*Page i of iii*

*Issue 1*



# PASSENGER RAIL AGENCY OF SOUTH AFRICA

## ANNEXURE R

### SPECIFICATION FOR SERVICES ON, OVER, UNDER OR ADJACENT TO RAILWAY

#### LINES AND NEAR HIGH VOLTAGE EQUIPMENT

(E7/1 2012)

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# PASSENGER RAIL AGENCY OF SOUTH AFRICA

## APPROVAL SHEET

DESIGNATION	SIGNATURE	DATE
Approved by: PRASA –MANAGEMENT BOARD		
Issued by: PRASA – Executive Manager (AM&D)		
Understood and accepted by: PRASA – Senior Manager Infrastructure		
Prepared by: PRASA – Manager (Perway and Structures)		
Prepared by: PRASA – Manager (Electrical)		
Prepared by: PRASA – Manager (Signal)		



# PASSENGER RAIL AGENCY OF SOUTH AFRICA

**E7/1 2012**

SPECIFICATION FOR SERVICES ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES  
AND NEAR HIGH VOLTAGE EQUIPMENT

(This specification shall be used in SA Rail Commuter Corporation contracts)

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### **1 DEFINITIONS**

The following definitions shall apply:

**Authorised Person:** A person whether an employee of Transnet or not, who has been specially authorised to undertake specific duties in terms of Spoornet's publication ELECTRICAL SAFETY INSTRUCTIONS, and who holds a certificate or letter of authority to that effect.

**Barrier:** Any device designed to restrict access to and prevent inadvertent contact with exposed "live" high-voltage electrical equipment.

**Bond:** A short conductor installed to provide electrical continuity.

**Responsible Representative:** The responsible person in charge, appointed by a contractor, who has undergone specific training (and holds a certificate) to supervise staff under his control to work on, over, under or adjacent to railway lines and in the vicinity of high-voltage electrical equipment.

**Contractor:** Any person or organisation appointed by PRASA to carry out work on its behalf.

**Dead:** Isolated and earthed.

**Electrical Officer (Contracts):** The person appointed in writing by the responsible Electrical Engineer in Transnet or PRASA'S maintenance Contractor as the person who shall be consulted by the Contractor in all electrical matters to ensure that adequate safety precautions are taken by the Contractor.

**Engineer:** The person, firm or company appointed by PRASA to act as Engineer for the purposes of the contract and designated as such in the Special Conditions of Contract, or any other Engineer appointed from time to time by PRASA and notified in writing to the Contractor.

**Executive Officer:** The person appointed by PRASA from time to time as the Executive Officer to act according to the rights and powers held by and obligations placed upon him in terms of the Contract.

**High-Voltage:** A voltage normally exceeding 1 000 volts.

**Live:** A conductor is said to be "live" when it is at a potential different from that of the earth or any other conductor of the system of which it forms a part.

**Near:** To be in such a position that a person's body or the tools he is using or any equipment he is handling may come within 3 metres of live exposed high-voltage electrical equipment.

**Occupation:** An authorisation granted by Transnet or PRASA'S maintenance and/or operating Contractor for work to be carried out under specified conditions on, over under or adjacent to railway lines.

**Occupation Between Trains:** An occupation during an interval between successive trains.

**Project Manager:** The person or juristic person appointed by PRASA from time to time as the

Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

**Total Occupation:** An occupation for a period when trains are not to traverse the section of line covered by the occupation.

**Work on:** Work undertaken on or so close to the equipment that the specified working clearances to the live equipment cannot be maintained.

**Work Permit:** A combined written application and authority to proceed with work on or

near dead electrical equipment.

## **PART A - GENERAL SPECIFICATION**

### **2. AUTHORITY OF OFFICERS OF TRANSNET OR PRASA'S MAINTENANCE AND/OR OPERATING CONTRACTOR**

- 2.1 The Contractor shall co-operate with the authorised personnel of Transnet or PRASA'S maintenance and/or operating Contractor and shall comply with all instructions issued and restrictions imposed with respect to the Services which bear on the presence and operation of Transnet or PRASA'S railway lines and high-voltage equipment.
- 2.2 Without limiting the generality of the provisions of 2.1, any duly authorised representative of Transnet or PRASA, having identified himself, may stop the work if, in his opinion, the safe passage of trains or the safety of Transnet or PRASA assets or any person is affected. **CONSIDERATIONS OF SAFETY SHALL TAKE PRECEDENCE OVER ALL OTHER CONSIDERATIONS.**

### **3. CONTRACTOR'S REPRESENTATIVES**

- 3.1 The Contractor shall nominate Responsible Representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the Engineer with the names, addresses and telephone numbers of the representatives.
- 3.2 The Contractor guarantees that he has satisfied himself that the Responsible Representative is fully conversant with this specification and that he shall comply with all his obligations in respect thereof.
- 3.3 The Responsible Representative shall be familiar with the contents and provisions of the ELECTRICAL SAFETY INSTRUCTIONS, copies of which they shall keep in their possession for the duration of the contract.

### **4. OCCUPATIONS AND WORK PERMITS**

- 4.1 Work to be done during total occupation or during an occupation between trains or under a work permit shall be done in a manner decided by the Engineer and at times to suit the requirements of Transnet or PRASA'S maintenance and/or operating Contractor.
- 4.2 The Contractor shall organise the Services in a manner, which will minimise the

number and duration of occupations and work permits required.

- 4.3 PRASA shall not be liable for any financial or other loss suffered by the Contractor arising from his failure to complete any work scheduled during the period of an occupation or work permit.
- 4.4 The Contractor shall submit to the Engineer, in writing, requests for occupations or work permits together with details of the work to be undertaken, at least 21 days before they are required. Transnet or PRASA'S maintenance and/or operating Contractor does not undertake to grant an occupation or work permit for any particular date, time or duration.
- 4.5 Transnet or PRASA'S maintenance and/or operating Contractor reserves the right to cancel any occupation or work permit at any time before or during the period of occupation or work permit. If, due to cancellation or change in date or time, the Contractor is not permitted to start work under conditions of total occupation or work permit at the time arranged, all costs caused by the cancellation shall be born by the Contractor except as provided for in clauses 4.6 to 4.8 above.
- 4.6 When the Contractor is notified less than 2 hours before the scheduled starting time that the occupation or work permit is cancelled, he may claim reimbursement of his direct financial losses caused by the loss of working time up to the time his labour and plant are employed on other work, but not exceeding the period of the cancelled occupation or work permit.
- 4.7 When the Contractor is notified less than 2 hours before the scheduled starting time, or during an occupation or work permit, that the duration of the occupation or work permit is reduced, he may claim reimbursement of his direct financial losses caused by the loss of working time due to the reduced duration of the occupation or work permit, but not exceeding the balance of the reduced occupation or work permit.
- 4.8 Reimbursement of the Contractor for any loss of working time in terms of 4.6 and 4.7, shall be subject to his claims being submitted within 14 days of the event with full details of labour and plant involved, and provided that the Engineer certifies that no other work on which the labour and plant could be employed was immediately available.



- 4.9 Before starting any work for which an occupation has been arranged, the Contractor shall obtain from the Engineer written confirmation of the date, time and duration of the occupation including the specified conditions applicable.
- 4.10 Before starting any work for which a work permit has been arranged, the Responsible Representative shall read and sign portion C of Annexure 8.1 of the ELECTRICAL SAFETY INSTRUCTIONS, presented by an authorised person, signifying that he is aware of the limits within which work may be undertaken. After the work for which the permit was granted has been completed, or when the work permit is due to be terminated, or if the permit is cancelled after the start, the same person who signed portion C shall sign portion D of Annexure 8.1 of the ELECTRICAL SAFETY INSTRUCTIONS, thereby acknowledging that he is aware that the electrical equipment is to be made "live". The Responsible Representative shall advise all his workmen accordingly.

## **5. SPEED RESTRICTIONS AND PROTECTION**

- 5.1 When speed restrictions are imposed by Transnet or PRASA'S maintenance and/or operating Contractor because of the Contractor's activities, the Contractor shall organise and carry out his work so as to permit the removal of the restrictions as soon as possible.
- 5.2 When the Engineer considers protection to be necessary the Contractor shall, provide all protection including flagmen, other personnel and all equipment for the protection of Transnet or PRASA's personnel and assets, the public and including trains. The Contractor shall arrange training and Transnet accreditation of the Contractor's flagmen and other personnel performing protection duties. The cost of the training shall be to the Contractor's account. It remains the responsibility of the Contractor to protect his personnel and assets at all times.
- 5.3 The Contractor shall consult with the Engineer, whenever he considers that protection will be necessary, taking into account the minimum permissible clearances set out in Transnet's publication, PERMANENT WAY INSTRUCTIONS.
- 5.4 The Contractor shall appoint a Responsible Representative to receive and transmit any instruction, which may be given by Transnet or PRASA'S maintenance and/or operating Contractor personnel providing protection.

## **6. ROADS ON TRANSNET OR PRASA PROPERTY**

- 6.1 The Contractor shall use every reasonable means to prevent damage to any of the roads or bridges communicating with or on the direct route to the site and shall select routes, use vehicles, and restrict loads so that any extraordinary traffic as may arise from the moving of plant or material to or from the site shall be limited as far as reasonably possible.
- 6.2 The Contractor shall not occupy or interfere in any way with the free use of any public or private road, right-of-way, path or street unless the Engineer has obtained the approval of the road authority concerned.

## **7. CLEARANCES**

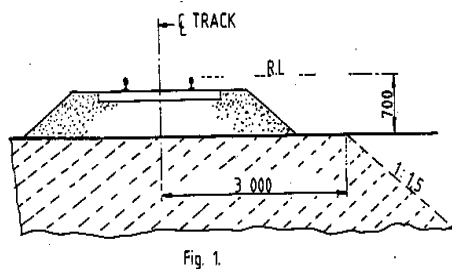
- 7.1 No temporary Services shall encroach on the appropriate minimum clearances set out in Transnet's publications, PERMANENT WAY INSTRUCTIONS and ELECTRICAL SAFETY INSTRUCTIONS.

## **8. STACKING OF MATERIAL**

- 8.1 The Contractor shall not stack any material closer than 3 metres from the centre line of any railway line or within 2.5 metres of the boundary fence without prior approval of the Engineer and considering the presence of any trackside equipment.
- 8.2 All stacking of material shall take place in accordance with the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, and the ELECTRICAL SAFETY INSTRUCTIONS.

## 9. EXCAVATION, SHORING, DEWATERING AND DRAINAGE

- 9.1 Unless otherwise approved by the Engineer any excavation adjacent to a railway line shall not encroach on the hatched area shown in Figure 1.



Formation level

- 9.2 The Contractor shall provide, at his own cost, any shoring, dewatering or drainage of any excavation unless otherwise stipulated elsewhere in the Contract.
- 9.3 Where required by the Engineer, drawings of shoring for any excavation under or adjacent to a railway line shall be submitted and permission to proceed obtained, before the excavation is commenced.
- 9.4 The Contractor shall prevent ingress of water to the excavation but where water does enter, he shall dispose of it as directed by the Engineer.
- 9.5 The Contractor shall not block, obstruct or damage any existing drains either above or below ground level unless he has made adequate prior arrangements to deal with drainage.
- ## 10. FALSEWORK FOR STRUCTURES
- 10.1 Drawings of falsework for the construction of any structure over, under or adjacent to any railway line shall be submitted to the Engineer and his permission to proceed obtained before the falsework is erected. Each drawing shall be given a title and a distinguishing number and shall be signed by a registered professional engineer certifying that he has checked the design of the falsework and that the drawings are correct and in accordance with the design.

- 10.2 After the falsework has been erected and before any load is applied, the Contractor shall submit to the Engineer a certificate signed by a registered professional engineer certifying that he has checked the falsework and that it has been erected in accordance with the drawings. Titles and numbers of the drawings shall be stated in the certificate. Notwithstanding permission given by the Engineer to proceed, the Contractor shall be entirely responsible for the safety and adequacy of the falsework.

## **11. PILING**

- 11.1 The Engineer will specify the conditions under which piles may be installed on Transnet or PRASA property.

## **12. UNDERGROUND SERVICES**

- 12.1 No pegs or stakes shall be driven or any excavation made before the Contractor has established that there are no underground services, which may be damaged thereby.
- 12.2 Any damage shall be reported immediately to the Engineer, or to the personnel in charge at the nearest station, or to the traffic controller in the case of centralised traffic control.
- 12.3 Any previously uncharted underground services encountered by the Contractor during the course of his activities shall be reported immediately to the Engineer who shall ensure the necessary inclusion in the “as built” drawings.

## **13. BLASTING**

- 13.1 No blasting in the vicinity of a railway line shall be carried out except with the prior written permission of the Engineer and under such conditions as he may impose.
- 13.2 The Contractor shall make arrangements for the supply, transport, storage and use of explosives.
- 13.3 The Contractor shall have labour, tools and plant, to the satisfaction of the Engineer, available on the site to clear immediately any stone or debris deposited on the track or formation by blasting, and to repair any damage to the track or formation immediately after blasting. Repairs to the track shall be carried out only under the supervision of a duly authorised representative of the PRASA's maintenance and/or operating Contractor.
- 13.4 The Contractor shall advise the Engineer of his intention to blast at least 21 days prior

to the commencement of any blasting operations.

- 13.5 Before any blasting is undertaken, the Contractor and the Engineer shall jointly examine and measure up any buildings, houses or structures in the vicinity of the proposed blasting to establish the extent of any cracking or damage that exists. The Contractor, at his own expense shall make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Engineer, is a direct result of the blasting.
- 13.6 All claims shall be settled by the Contractor as soon as possible. Should unreasonable delays occur, the PRASA will have the right to settle any such claims and recover the costs from the Contractor.
- 13.7 Within a reasonable time after completion of the blasting, the Contractor shall obtain a written clearance from each land owner in the vicinity of the blasting operations to the effect that all claims for compensation in respect of damage caused by the blasting operations to their respective properties have been settled.
- 13.8 The Contractor shall provide proof that he has complied with the provisions of clauses 10.17.1 to 10.17.4 of the Explosives Regulations (Act 26 of 1956 as amended).
- 13.9 Blasting within 500 metres of a railway line will only be permitted during intervals between trains. A person appointed by the Engineer, assisted by flagmen with the necessary protective equipment, will be in communication with the controlling railway station. Only this person will be authorised to give the Contractor permission to blast, and the Contractor shall obey his instructions implicitly regarding the time during which blasting may take place.
- 3.10 The flagmen described in clause 13.9 above, where provided by Transnet or PRASA'S maintenance and/or operating Contractor, are for the protection of trains and Transnet or PRASA property and personnel only, and their presence does not relieve the Contractor in any manner of his responsibilities in terms of Explosives Act or Regulations, or any obligation in terms of this Contract.
- 13.11 The person described in clause 13.9 above will record in a book provided and retained by the Engineer the dates and times:
- (i) when each request is made by him to the controlling station for permission to blast;

- (ii) when blasting may take place;
- (iii) when blasting actually takes place; and
- (iv) when he advises the controlling station that the line is safe for the passage of trains.

13.12 Before each blast the Contractor shall record in the same book, the details of the blast to be carried out. The person appointed by the Engineer and the person who will do the blasting shall both sign the book whenever an entry described in clause 13.11 above is made.

13.13 The terms of clause 27 hereof shall be strictly adhered to.

#### **14. RAIL TROLLEYS**

14.1 The use of rail trolleys on a railway line will be permitted only if approved by the Engineer and under the conditions stipulated by him.

14.2 All costs in connection with such trolley working requested by the Contractor shall, unless otherwise agreed, be borne by the Contractor, including the costs of any train protection services required.

#### **15. ANCILLARY TRACKSIDE EQUIPMENT AND FACILITIES.**

15.1 Where signal track circuits are installed, the Contractor shall ensure that no material capable of conducting an electrical current makes contact between rails of a railway line/lines.

15.2 No signal connections on track-circuited tracks shall be severed without the Engineer's knowledge and consent.

15.3 No ancillary trackside equipment or facilities such as axle counters, bonds, wiring runs, connection boxes, points machines, signals, drainage systems etc. shall be disconnected, removed, altered or in any way interfered with without the Engineer's knowledge and consent.

#### **16. PENALTY FOR DELAYS TO TRAINS**

16.1 If any trains are delayed by the Contractor and the Engineer is satisfied that the delay was avoidable, a penalty will be imposed on the Contractor in terms of the Special Conditions of Contract.

## **17. COMPLIANCE WITH STATUTES AND REGULATIONS**

17.1 The Contractor shall comply with the provisions of the following:

- (i) the OHS Act 85 of 1993, as amended;
- (ii) the Explosive Act 26 of 1956, as amended;
- (iii) the Workmen's Compensation Act, 1941, as amended;
- (iv) the Mines Health and Safety Act 29 of 1996, as amended;
- (v) the ELECTRICAL SAFETY INSTRUCTIONS, as amended;

and all regulations framed under these acts.

17.2 The Contractor shall prepare and submit to the PRASA's maintenance and operating contractor for acceptance, a Safety Case clearly explaining his Safety Management System. A site access certificate will not be issued to the Contractor unless this Safety Case has been accepted.

17.3 The Contractor shall comply with the provisions of the OHS Act 85 of 1993, as amended. For the purpose of this Act, the site occupied by the Contractor is transferred, for the duration of the contract, to the control of the Contractor as if it were his property. Prior to commencement of any work, and following the acceptance of a Safety Case, a site access certificate shall be issued to the Contractor by the PRASA's maintenance and/or operating Contractor. As employer, the Contractor is in every respect responsible for compliance with the provisions of this Act.

17.4 Compliance with all applicable legislation shall be entirely at the Contractor's cost.

## **18. TEMPORARY LEVEL CROSSINGS**

18.1 Applications for temporary level crossings shall be submitted by the Contractor in writing for approval to the PRASA's maintenance and/or operating Contractor. These applications shall include a plan and cross-sectional view of the site including all affected services and proposed temporary alterations thereto.

18.2 The PRASA's maintenance and/or operating Contractor may permit the construction of a temporary level crossing over the railway line at any approved site. The period for which the level crossing is permitted will be at the discretion of the PRASA's maintenance and/or operating Contractor.

- 18.3 The Contractor at his own cost, shall arrange the construction by a nominated specialist subcontractor of the entire approved temporary level crossing, including all level crossing signs and height gauges and alterations to communication, power and signal equipment as well as drainage.

The constructed temporary level crossing shall be subject to the inspection and approval of the PRASA's maintenance and/or operating Contractor. After the temporary level crossing has served its purpose, the Contractor, at its own cost, shall arrange its removal by a nominated specialist Contractor and return the infrastructure assets to normal to the approval of PRASA's maintenance and/or operating contractor.

- 18.4 The Contractor shall, at his own cost, take all necessary steps including the provision of gates, locks and, where necessary, watchmen to restrict the use of the level crossing to himself and his employees, his sub-contractors and their employees, the staff of the PRASA and its maintenance and/or operating Contractor and to such other persons as the PRASA may permit, of whose identity the Contractor will be advised.

If ordered by the PRASA's maintenance and/or operating Contractor, the Contractor shall, at his own cost, appoint persons to control road traffic using any temporary level crossing. Such persons shall stop all road traffic when any approaching train is within 750 m of the level crossing and shall not allow the road traffic to proceed over the level crossing until the lines are clear.



## **ART B - ADDITIONAL SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE**

### **ELECTRICAL EQUIPMENT**

#### **1 GENERAL**

- 1.1 This specification is based on the contents of Spoornet's publication ELECTRICAL SAFETY INSTRUCTIONS, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract on request only. These instructions apply to all work near live high-voltage equipment maintained and/or operated by Transnet or PRASA'S maintenance contractor, and the onus rests on the Contractor to ensure that he obtains a copy.
- 1.2 The Contractor's attention is drawn in particular to the contents of Sections 1 and 2 of the publication ELECTRICAL SAFETY INSTRUCTIONS.
- 1.3 The publication ELECTRICAL SAFETY INSTRUCTIONS covers the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be ordered by and at the discretion of the Electrical Officer (Contracts).
- 1.4 This specification must be read in conjunction with and not in lieu of the publication ELECTRICAL SAFETY INSTRUCTIONS.
- 1.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any live high-voltage equipment.
- 1.6 The Contractor shall regard all high-voltage equipment as live unless a work permit is in force.
- 1.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall, unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of Transnet or PRASA's maintenance contractor

where this is necessary.

- 1.8 No barrier shall be removed unless authorised by the Electrical Officer (Contracts).

## **2. WORK ON BUILDINGS OR FIXED STRUCTURES**

- 2.1 Before any work is carried out or measurements are taken on any part of a building, fixed structure or earthServices of any kind above ground level situated within 3 metres of live high voltage equipment, the Electrical Officer (Contracts) shall be consulted to ascertain the conditions under which the work may be carried out.
- 2.2 No barrier erected to comply with the requirements of the Electrical Officer (Contracts) shall be used as temporary staging or shuttering for any part of the Services.
- 2.3 The shuttering for bridge piers, abutments, retaining walls or parapets adjacent to or over any track may be permitted to serve as a barrier, provided that it extends at least 2,5 metres above any working level in the case of piers, abutments and retaining walls and 1,5 metres above any working level in the case of parapets.

## **3. WORK DONE ON OR OUTSIDE OF ROLLING STOCK, INCLUDING LOADING AND/OR UNLOADING**

- 3.1 No person shall stand, climb or work whilst on any platform, surface or foothold higher than the normal unrestricted places of access, namely:-

(i) the floor level of trucks;

(ii) external walkways on diesel, steam and electric locomotives, steam heat vans, etc.  
and

(iii) walkways between coaches and locomotives.

When in these positions, no person may raise his hands or any equipment or material he is handling above his head.

- 3.2 In cases where the Contractor operates his own rail mounted equipment, he shall arrange for the walkways on this plant to be inspected by the Electrical Officer (Contracts) and approved, before commencement of work.
- 3.3 The handling of long lengths of material such as metal pipes, reinforcing bars, etc. should be avoided, but if essential they shall be handled as nearly as possible in a horizontal position below head height.

- 3.4 The Responsible Representative shall warn all persons under his control of the danger of being near live high-voltage equipment, and shall ensure that the warning is fully understood.
- 3.5 Where the conditions in clauses 3.1 to 3.3 above cannot be observed the Electrical Officer (Contracts), shall be notified. He will arrange for suitable safety measures to be taken. The Electrical Officer (Contracts), may in his discretion and in appropriate circumstances, arrange for a suitable employee of the Contractor to be specially trained by the relevant authority at the Contractor's costs, as an Authorised Person to work closer than 3 metres from live overhead conductors and under such conditions as may be imposed by the responsible Electrical Engineer in Transnet or PRASA'S maintenance contractor.

#### **4. USE OF EQUIPMENT**

##### **4.1 MEASURING TAPES AND DEVICES.**

- 4.1.1 Measuring tapes may be used near live high-voltage equipment provided that no part of any tape or a person's body comes within 3 metres of the live equipment.
- 4.1.2 In windy conditions the distance shall be increased to ensure that if the tape should fall it will not be blown nearer than 3 metres from the live high-voltage equipment.
- 4.1.3 Special measuring devices longer than 2 metres such as survey staves and rods may be used if these are of non-conducting material and approved by the senior responsible Electrical Engineer in Transnet or PRASA'S maintenance contractor, but these devices must not be used within 3 metres of live high-voltage equipment in rainy or wet conditions.
- 4.1.4 The assistance of the Electrical Officer (Contracts) shall be requested when measurements within the limits defined in clauses 4.1.1 to 4.1.3 above are required.

##### **4.2 PORTABLE LADDERS.**

- 4.2.1 Any type of portable ladder longer than 2 metres may only be used near live high-voltage equipment under the direct supervision of the Responsible Representative. He shall ensure that the ladder is always used in such a manner that the distance from the base of the ladder to any live high-voltage equipment is greater than the fully extended length of the ladder plus 3 metres. Where these conditions cannot be observed, the Electrical Officer (Contracts) shall be advised, and he will arrange for suitable safety

measures to be taken.

#### **4.3 SERVICES FROM INSULATED VEHICLES AND TRESTLE TROLLEYS.**

- 4.3.1 Where specially constructed insulated vehicles or trestle trolleys are available for use, authorised persons, category A, or a person issued with a letter of authority (clause 303.0 of the ELECTRICAL SAFETY INSTRUCTIONS) may be permitted to work from the top of such vehicles under “live” overhead track equipment.

### **5. CARRYING AND HANDLING MATERIAL AND EQUIPMENT**

- 5.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material, which exceeds 2 metres in length, shall be carried completely below head height near live high-voltage equipment. For maximum safety such material should be carried by two or more persons so as to maintain it as nearly as possible in a horizontal position. The utmost care must be taken to ensure that no part of the material comes within 3 metres of any live high-voltage equipment.
- 5.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any live high-voltage equipment unless the Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.
- 5.3 The presence of overhead power lines shall always be considered, especially when communications lines or cables or aerial cables, stay wires, etc. are being erected above ground level.

### **6. PRECAUTIONS TO BE TAKEN WHEN ERECTING OR REMOVING POLES, ANTENNAE, TREES ETC.**

- 6.1 A pole may be handled for the purpose of erection or removal near high-voltage equipment under the following conditions:
- (i) If the distance between the point at which the pole is to be erected or removed and the nearest live high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.
  - (ii) If the distance described in (i) is less than the length of the pole plus 3 metres, the Electrical Officer (Contracts) shall be consulted to arrange for an Authorised Person to supervise the work and to ensure that the pole is earthed where

possible. The pole shall be kept in contact with the point of erection, and adequate precautions shall be taken to prevent contact with live high-voltage equipment.

6.2 The cost of supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

6.3 The provisions of clauses 6.1 and 6.2 above shall also apply to the erection or removal of columns, antennae, trees, posts, etc.

## **7. USE OF WATER**

7.1 No water shall be used in the form of a jet if it can make contact with any live high-voltage equipment or with any person working on such equipment.

## **8. USE OF CONSTRUCTION PLANT**

8.1 "Construction plant" entails all types of plant including cranes, piling frames, boring machines, excavators, draglines, dewatering equipment and road vehicles with or without lifting equipment.

8.2 When work is being undertaken in such a position that it is possible for construction plant or its load to come within 3 metres of live high-voltage equipment, the Electrical Officer (Contracts) shall be consulted. He will arrange for an Authorised Person to supervise the work and to ensure that the plant is adequately earthed. The Electrical Officer (Contracts) will decide whether further safety measures are necessary.

8.3 The cost of any supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

8.4 When loads are handled by cranes, non-metallic rope hand lines shall be used, affixed to such loads so as to prevent their swinging and coming within 3 metres of live high-voltage equipment.

8.5 Clauses 8.1 to 8.4 above shall apply mutatis mutandis to the use of maintenance machines of any nature.

## **9. WORK PERFORMED UNDER DEAD CONDITIONS UNDER COVER OF A WORK PERMIT**

9.1 If the Responsible Representative finds that the work cannot be done in safety with the high voltage electrical equipment live, he shall consult the Electrical Officer (Contracts)

who will decide on the action to be taken.

9.2 If a work permit is issued the Responsible Representative shall:

- (i) before commencement of work ensure that the limits within which work may be carried out have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.
- (ii) sign portion C of the permit before commencement of work;
- (iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;
- (iv) care for the safety of all persons under his control whilst work is in progress; and
- (v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

## **10. TRACTION RETURN CIRCUITS IN RAILS**

10.1 Dangerous conditions can be created by removing or severing any bond.

10.2 Broken rails with an air gap between the ends, and joints, at which fishplates are removed under "broken bond" conditions, are potentially lethal. The rails on either side of an air gap between rail ends on electrified lines shall not be touched simultaneously until rendered safe by an Authorised Person.

10.3 The Contractor shall not break any permanent bonds between rails or between rails and any structure. He shall give the Engineer at least 21 days written notice when removal of such bonds is necessary.

10.4 No work on the track, which involves interference with the traction return rail circuit, either by cutting or removing the rails, or by removal of bonds shall be done unless the Electrical Officer (Contracts) is consulted. He will take such precautions as may be necessary to ensure continuity of the return circuit before permitting the work to be commenced.

## **11. BLASTING**

11.1 The Contractor shall obtain the permission of the Electrical Officer (Contracts) before blasting, and shall give at least 21 days notice of his intention to blast. The Electrical Officer (Contracts) shall then decide whether it is necessary to have an Authorised

Person in attendance during such operations.

- 11.2 The terms of clause 13 of SPK7/1 Part A or clause 15 of the SPK7/2 Part A, as applicable, shall be strictly adhered to.

**12. HIGH-VOLTAGE ELECTRICAL EQUIPMENT NOT MAINTAINED AND/OR OPERATED BY TRANSNET OR PRASA'S MAINTENANCE CONTRACTOR**

Where the work is undertaken on or near high-voltage electrical equipment which is not maintained and/or operated by Transnet or PRASA'S maintenance contractor, the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, and/or the Mines Health and Safety Act (Act 29 of 1996), shall apply.

Such equipment includes:

- (i) Equipment of Electricity Suppliers;
- (ii) the Contractor's own power supplies;
- (iii) Equipment being installed by, but not yet taken over from the Contractor, and
- (iii) Electrified Private Siding equipment.



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